
APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

March 30

Agriculture and Livestock - **HB 681, HB 1908, HB 1918**

Business and Industry - **HB 257, HB 1209, HB 1382, HB 1819**

Corrections - **HB 609, HB 1688, HB 1711**

Criminal Jurisprudence - **HB 348, HB 493, HB 528, HB 549, HB 825, HB 958, HB 1282, HB 1372, HB 1506, HB 1644, HB 2058**

Culture, Recreation, and Tourism - **HB 1786, HB 2242**

Higher Education - **HB 602, HB 962**

Human Services - **HB 802**

Insurance - **HB 1290, HB 1759, HB 2064, HB 2449, HB 2752, HB 798**

Land and Resource Management - **HB 1213, HB 1445, HB 2387, HB 2906, HB 3202**

Licensing and Administrative Procedures - **HB 357, HB 358, HB 1084, HB 1406, HB 1484, HB 1505, HB 1974, HB 2104, HB 2238, HB 2310, HB 2509, HB 2594, HB 2763, HB 3113**

Natural Resources - **HB 2374, HB 2666**

Public Education - **HB 200, HB 2263**

Public Health - **HB 19, HB 594, HB 887, HB 1232, HB 1363, HB 1404, HB 1409, HB 1678, HB 1740, HB 1785, HB 1990, HB 2030, HB 2055, HB 2196, HB 2330, HB 2382, HB 2383, HCR 88**

Transportation - **HB 575, HB 1810**

HOUSE OF REPRESENTATIVES
NOTICE OF PUBLIC HEARING

COMMITTEE: Elections
TIME & DATE: upon final adjourn./recess
Monday, April 06, 2009
PLACE: E2.028
CHAIR: Rep. Todd Smith

[SB 362](#) Fraser | et al.
Relating to requiring a voter to present proof of
identification.

Testimony before the committee will be limited to invited
witnesses.

The House Committee on Elections

81st Legislature

April 6, 2009

Upon final adjournment/recess

E2.028

CORRECTED MINUTES

On May 7, 2009, the House Committee on Elections authorized the correction of the minutes for the meeting of the House Committee on Elections held on April 6, 2009. The following are the corrected minutes for that meeting:

Pursuant to a notice posted on April 1, 2009, the House Committee on Elections met in a public hearing and was called to order by the chair, Representative Smith, Todd, at 1:30 p.m.

The roll was answered as follows:

Present: Representatives Smith, Todd; Pena; Allen; Anchia; Bohac; Bonnen; Brown, Betty; Heflin (8).

Absent: Representative Harper-Brown (1).

A quorum was present.

(Representative Harper-Brown now present.)

(Representative Pena in chair.)

SB 362

The chair laid out SB 362.

The chair recognized Representative Smith, Todd to explain the measure.

(Representative Smith, Todd back in chair.)

Testimony taken/registration recorded. (See attached witness list.)

(Representative Pena in chair.)

(Representative Smith, Todd back in chair.)

(Representative Pena in chair.)

The chair recognized Representative Smith, Todd to close on the measure.

The bill was left pending without objection.

(Representative Smith, Todd back in chair.)

At 1:18 a.m. on April 7, 2009, on the motion of the chair and without objection, the meeting was adjourned subject to the call of the chair.

Rep. Smith, Todd, Chair

Steven Schar, Clerk

THE HOUSE COMMITTEE ON ELECTIONS

81ST LEGISLATURE

APRIL 6, 2009



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TX_00031029

1 CHAIRMAN TODD SMITH: The House Committee
2 on Elections is now called to order.

3 Will the clerk please call the roll.

4 THE CLERK: Representative Smith?

5 REPRESENTATIVE SMITH: Here.

6 THE CLERK: Representative Pena?

7 REPRESENTATIVE PENA: Here.

8 THE CLERK: Representative Allen?

9 REPRESENTATIVE ALLEN: Here.

10 THE CLERK: Representative Bohac?

11 REPRESENTATIVE BOHAC: Here.

12 THE CLERK: Representative Bonner?

13 (No Response.)

14 THE CLERK: Representative Harper-Brown?

15 (No Response.)

16 THE CLERK: Representative Helfin?

17 (No Response.)

18 THE CLERK: Representative Veasey?

19 REPRESENTATIVE VEASEY: Here.

20 CHAIRMAN TODD SMITH: Quorum being
21 present, welcome, everybody here today that has come
22 to hear a discussion on an issue that has been of
23 great concern for our state and other states, as well.

24 I want to especially welcome 13
25 individuals who have agreed to come tonight and



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1 provide their testimony and expertise from varying
2 perspectives on the issue of Enhanced Voter
3 Identification. Many of you have come from quite a
4 long way. We appreciate you taking the time to be
5 with us.

6 We're going to lay out the Senate Bill
7 here in a moment, and at that point I'm going to hand
8 the gavel to Vice-Chairman Pena for purposes of laying
9 that piece of legislation out.

10 But before I do that, I'd like to make an
11 opening statement, and for purposes primarily of the
12 experts that are here with us, I want to give you some
13 sense of the kind of questions that I'm interested in
14 you answering.

15 So that to the extent that you have
16 expertise in answering any of the questions that I
17 have, you might be inclined to focus on those
18 questions. But I also want to give any other member
19 of the committee an opportunity to make an opening
20 comment before we go to the witnesses.

21 It's my intent, we're starting at about
22 1:30. And just so that everybody understands how we
23 are we're going to proceed, once we lay the bill out
24 and begin recognizing expert witnesses, it is my
25 intent, we have witnesses representing both



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1 perspectives. Not that there are only two
2 perspectives, but certainly a diverse group of
3 witnesses to provide us with every conceivable
4 perspective on this issue.

5 And it is my intent, as much as possible,
6 to recognize witnesses that are for, followed by
7 witnesses that are against, followed by witnesses that
8 are for, followed by witnesses that are against until
9 we accommodate all of the experts who are with us
10 today.

11 Otherwise we wouldn't limit the length of
12 testimony, but because we're going to be doing this
13 again with the members of the public tomorrow, and
14 because that has the potential to last well into the
15 night. We have a number a variety of ages on our
16 committee, and I don't want to kill anybody.

17 So I am determined that we get out of here
18 tonight by midnight so that people can have a
19 reasonable amount of sleep before we accommodate the
20 public tomorrow and take their testimony until they
21 run out of steam.

22 UNIDENTIFIED SPEAKER: Do we have to go
23 till midnight?

24 CHAIRMAN TODD SMITH: No. We don't have
25 to go till midnight, and I'm about to tell you how I



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1 plan to accommodate the witnesses.

2 It's my intent and there will be a little
3 device over there, Steven. We've got a device, and
4 what this is going to do, I'm going to allow every
5 witness to give a ten-minute, uninterrupted comment so
6 that you can say whatever you wish to the committee
7 and whatever is on your mind and be uninterrupted in
8 doing so.

9 I believe that is set to go off so that
10 you have a 1 and 1/2-minute warning. When you see a
11 yellow light, that means you've got a minute and a
12 half before the ten minutes are up. And at the end of
13 the ten minutes, Steven is going to let me know that
14 the ten minutes are up because I can't see the light.

15 At which point we will begin a period of
16 up to 30 minutes' of questions on the part of the
17 panel. And then, obviously, this is, unusual, members
18 in that we're not usually limited in the amount of
19 time that we have to ask the questions that are on our
20 mind.

21 And in light of the fact that today we're
22 operating in a different manner, I would just ask that
23 all of you be respectful that there are nine members
24 on the committee, and I presume everybody will not
25 have an opportunity in asking a question or two.



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1 I'm going to do my best in recognizing,
2 members to make sure questions from both sides of the
3 political aisle are given equal opportunity. That is
4 generally, how we will proceed.

5 Yes, Representative Anchia.

6 REPRESENTATIVE ANCHIA: I have a couple of
7 questions, Mr. Chairman.

8 Have you given some thought to the order
9 that we're going to take witness in? Is it going to
10 be, namely, people who have flights? Is that going to
11 be the procedure?

12 CHAIRMAN TODD SMITH: Again, anybody who
13 has flight arrangements that are peculiar or require
14 us to put you toward the front of the agenda, please
15 make my staff aware of them and we will do our best to
16 accommodate that within the constraints of wanting to
17 put witnesses both for and against this piece of
18 legislation.

19 I'll be glad to accommodate those
20 witnesses who have time deadlines within the
21 constraints of recognizing both sides both early in
22 testimony and as we proceed through the evening. I
23 think there's even on the most, what is received to be
24 the most decisive of issues, I think there are more
25 surprisingly enough that unites us in principal than



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1 divides us.

2 I think I can speak with certainty that
3 every member of this committee agrees that we should
4 do all that we reasonably can do to prevent all types
5 of voter fraud. I think everybody on this committee
6 believes that we should do all we that we can do to
7 insure that any legal voter may vote.

8 I think everybody on this committee agrees
9 that it is equally unacceptable when a legal vote does
10 not count. Whether that vote occurs due to an
11 unreasonable barrier to voting or due to an offsetting
12 fraudulent vote.

13 And what we're looking for here tonight
14 from the experts that have been asked to testify for
15 ideas on how we might enhance the security of our
16 elections while simultaneously expanding access to the
17 polls.

18 There are a number of questions that I
19 specifically am interested in hearing from the expert
20 witnesses on, and again my co-panelists may have other
21 questions they would like to emphasize for you to
22 address, as well.

23 No. One on my list is the extent of the
24 evidence of voter impersonation in Texas or
25 nationally.



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1 No. Two: Is such evidence the tip of the
2 fraud iceberg or is it the entire iceberg?

3 Three: If most voter fraud occurs through
4 absentee ballots, what could or should be done about
5 that?

6 Four: Any reliable evidence that the
7 Texas Senate version, and I'm going to lay that out in
8 a minute and take a moment to read so that all of our
9 witnesses are familiar to the extent that you're not,
10 and all our panelists and my colleagues are familiar
11 with the details of that legislation.

12 But I'm interested in any reliable
13 evidence that the Texas Senate version of Voter ID
14 would either enhance or suppress voter turnouts.

15 Five: To what extent would you expect the
16 Texas Senate version, again, of Voter ID to defer
17 voter fraud.

18 Six: What is the best way to handle
19 provisional ballots cast due to an inadequate ID? How
20 might we best ensure that a legal voter who casts a
21 provisional ballot will have their vote counted?

22 Seven: And this will be a fairly narrow
23 group of people, I presume, that would be able to
24 address this, but I'm interested in how many voters
25 can I register per million dollars spent?



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1 Those are the seven questions that I mark
2 out that I am particularly interested in hearing from
3 you about. And at this time I will recognize anyone
4 on the panel who wishes to be recognized for purposes
5 of making any opening comments.

6 At this time the chair shows
7 representative Linda Harper-Brown to be present, and I
8 recognize Representative Anchia to make opening
9 comments.

10 REPRESENTATIVE ANCHIA: Thank you,
11 Mr. Chairman and members of the committee and members
12 of the public and the expert witnesses that are here
13 today. We appreciate everyone's participation in this
14 very important set of hearings.

15 We're going to be meeting today with
16 expert testimony and then tomorrow we will have the
17 public experts join us for additional hearings.

18 And I want to say it is my view that this
19 is an important exercise and an important part of
20 democracy. And I want to thank you everyone,
21 especially those who came in from out of town who are
22 not from Texas and are willing to come here to help
23 inform us as we develop our public policy.

24 The focus of this hearing today will be
25 the Fraser Bill, the bill that was passed on a



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1 partisan basis out of the Senate and is coming out of
2 the House.

3 And it is interesting to note that it is a
4 Voter Identification bill that seeks to remedy the
5 alleged problem or type of voter fraud in Texas that
6 would be voter impersonation.

7 I've been on this committee for three
8 sessions now. In 2005 we took testimony on this. In
9 2006 we studied it during the interim. 2007, during
10 my second session I was on the committee. 2008, we
11 studied it during the interim. And now we're going to
12 take testimony in 2009.

13 And to date, even with an ongoing
14 investigation into voter fraud, generally, by the
15 Attorney General of the State of Texas, we have found
16 no documented cases of in-person, at the polls, voter
17 impersonation.

18 So I ask frequently: What is this bill
19 about? And some might argue it is to deal with
20 potential for fraud. But I also note that what we
21 have seen in the studies that we've undertaken is that
22 the fraud that does exist on behalf of voters have
23 been on mail-in ballots, which are wholly exempted
24 from the bills that we heard in 2005, 2007 and now
25 that we're hearing in 2009.



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1 And what I really would like this
2 committee to focus on and have members of the public
3 think about is the big beast in the room, and that is
4 the low participation rates in Texas. Texas is
5 consistently in the lowest quintile of participation
6 in the country. This has not changed.

7 During the last few election cycles it is
8 clear that we have structural impediments to voting in
9 this state because people are not participating. Even
10 with the very highly contested Presidential Election
11 during the last election cycle, it was barely over
12 half of our registered voters statewide that
13 participated in the election.

14 And I don't think that's good for Texas.
15 I don't think it's good for our democracy. And if the
16 members of the committee want to engage on that issue,
17 what are we doing wrong now? How can we increase
18 security in the system, but at the same time in the
19 spirit of Carter-Ford and then later Carter-Baker,
20 have additional access to the franchise so that we are
21 no longer last or next-to-last or near last in the
22 country in terms of voter participation.

23 And if the members of the committee and
24 members of the public and members of the expert
25 witness want to work on this, then I think we can have



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1 a very big discussion.

2 But that's the big beast in the room: Is
3 Texas satisfied with the lack of participation in the
4 state and being either last or near last in voter
5 participation and turn-out year after year after year
6 and election cycle after election cycle after election
7 cycle?

8 So members of the committee, I offer to
9 you my skills or lack thereof as a legislator in
10 trying to come up with a system that increases access
11 to the franchise, and at the same time, provides
12 greater security.

13 Because I worry that the outcome of the
14 Fraser Bill, if passed by the House, who have negative
15 effects on access to that franchise and would
16 disenfranchise hundreds of thousands of Texans, and I
17 think that's a bad result.

18 So I look forward to working with all of
19 you in achieving a good result.

20 And may I say to the audience and to the
21 members of the media that I'm extremely appreciative
22 of the Chairman's approach to these hearings. He has
23 been certainly a good listener and a gentleman as part
24 of this process, and I thank you, and I appreciate
25 your being inclusive as part of this process.



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1 I've had for two sessions and had voter
2 suppression bills crammed down our throat, and I think
3 if we are willing to be bipartisan, I think we can get
4 something done that all Texans can be proud of.

5 CHAIRMAN TODD SMITH: Thank you,
6 Representative Anchia.

7 Representative Brown.

8 REPRESENTATIVE BROWN: It won't take me
9 long, Mr. Chairman.

10 I just want to also welcome those who have
11 come here to help us by providing their expert
12 testimony on both sides of the issue.

13 And rather than taking your time, I will
14 not argue my case at this point. I think we will have
15 plenty of time to do that later.

16 I just want to quote the Senator who
17 passed this in the Senate. I think that he summed it
18 up so beautifully when he said, what we're here about,
19 we want to make it easy to vote but hard to cheat and
20 that's all we're trying to do. Very easy to vote but
21 hard to cheat. Thank you.

22 CHAIRMAN TODD SMITH: Any other member who
23 wishes to make any opening comments before we lay out
24 this bill and begin expert testimony?

25 Sure. Representative Veasey.



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1 REPRESENTATIVE VEASEY: Mr. Chairman,
2 thank you very much for letting me sit in. I'm not on
3 the committee but this is an issue that is near and
4 dear to me.

5 I think it's sad that just not too long
6 ago Dr. King and the civil rights marchers of the
7 1960s and before that gave their lives, marched,
8 threatened and had barriers put in front of them. And
9 it seems to me that this is what this bill is really
10 all about.

11 I think my good friend from Dallas,
12 Representative Anchia, pointed out so eloquently, that
13 ever since the beginning of our freshman year we've
14 been debating this bill. Not once has there been any
15 shred of voter impersonation that has been brought
16 before the House. Not once.

17 And I've had a member, a very conservative
18 member, come up to me on the House Floor, and say,
19 "Mark, this is not going to hurt you. Why are you
20 concerned about this? This is only going to hurt
21 white democrats."

22 And I understand the point of the bill,
23 that you can shave enough of the minority vote, the
24 black and brown vote, because this is a racial issue.

25 Make no mistake about it. Don't go home



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1 tonight thinking that this is a about voter
2 impersonation or it's about Voter ID. It's about
3 skimming enough minorities, people that have a hard
4 time beeping able to access documents. People that
5 have a hard time being able to exercise their right to
6 vote. People that don't have access to
7 transportation, like many of us are blessed to have.

8 This is about skimming enough votes so
9 some people can't get elected. And we've had members
10 in this body that were elected or narrowly defeated by
11 just a few votes. We have members that are here
12 today. And it is inherently unfair.

13 I mean, I've looked at this bill. I mean,
14 I go into everything with an open mind. But I have
15 seen nothing after the three years, after three
16 sessions that we've been working on this, no one's
17 presented anything to show that there's voter
18 impersonation going on at polls.

19 And so I think with that, I understand
20 that people feel passionate about this on both sides
21 of the issue. But I think in order to be honest with
22 yourself and sleep at night, that you have to say and
23 ask yourself the question: Is this right, despite the
24 fact that no one has proved that anybody is doing
25 anything wrong? Is it right?



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1 Can you live with your conscious knowing
2 that not just -- and I know Representative Anchia did
3 a good job of just saying that it's Texans that would
4 be disenfranchised, but a lot of the Texans, let's be
5 honest, are going to be black and brown and poor
6 folks.

7 Can you really sleep with yourself at
8 night knowing that if this bill passed, that most of
9 the people that would be denied the right to vote are
10 going to be black, brown and poor?

11 Can you live with yourself knowing that
12 most of the people that would be denied the right to
13 vote are the same people, and they look like the same
14 people 30, 40 years ago, with Dr. King that were
15 denied the right to vote?

16 It's, basically, the same group of people
17 that have barriers put in front of them but it's just
18 a different time and a different generation.

19 And one of the things that I do like about
20 the conservative movement is that they say we should
21 never pass bills and that we should never pass laws or
22 make government interfere in people's lives when
23 there's no need for a law.

24 That you should only pass laws when there
25 are just these overwhelming instances to where



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1 government needs to take action to get involved in
2 people's lives.

3 And so now you have conservatives that are
4 pushing this bill, that are looking forward to this
5 bill, and nothing has been presented to them to show
6 that government should add this extra barrier, should
7 put this extra burden on here for minorities to be
8 able to vote.

9 We're just doing it just because we want
10 to see what's going to happen and see if enough votes
11 can be skimmed in order to make it a difference in a
12 tight race.

13 And to the person that said to me: This
14 is not going to hurt you because you're in a safe,
15 black district -- well, guess what? Maybe like
16 Barrack Obama, maybe I'll want to do something else
17 one day. Maybe I'll want to run in a district to
18 where it will be a close race and I can't rely just on
19 all black votes.

20 Maybe the handful of black voters in our
21 districts that will be denied the right to vote, even
22 though I'm still going to win.

23 But that person that moves from apartment
24 to apartment, that moves from their grandparents'
25 house to a different apartment -- maybe those handful



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1 of people in our district, even though I'm still going
2 to win -- I think it's still incumbent on me to look
3 out for their interests.

4 And that's why I'm up here today. And,
5 Mr. Chairman, I thank you for allowing me to sit in on
6 the committee.

7 CHAIRMAN TODD SMITH: Thank you,
8 Representative Veasey.

9 Anybody else here that wishes to make any
10 opening comments?

11 I think we've heard in these opening
12 comments people's sincere concerns about the concept
13 and notion on the one hand of voter fraud, and on the
14 other hand about voter suppression.

15 I think they're all sincere concerns, and
16 what this hearing, I hope, is going to be about is to
17 lay out before the entire committee so that there is a
18 deep understanding on everybody's part about the
19 extent to which the evidence supports those concerns.

20 I want to know everything there is to know
21 about the state of the evidence that would suggest
22 that a change in policy in the State of Texas from
23 requiring everyone to have some form of
24 identification, either a photo ID or non-photo ID, to
25 a policy that simply says: If you do not have a photo



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1 ID, instead of providing one form of photo ID, you
2 provide two forms of photo ID.

3 I'm very interested in hearing what the
4 actual evidence is that that change would have a
5 material impact on any legal voter's ability to vote.

6 And we are also interested in looking
7 fully and completely at the evidence of fraud and at
8 the extent to which it occurs and what we can do about
9 it.

10 We are going to focus on both of those
11 goals. And it's my intent not to make any
12 presumptions at all about what the evidence will show
13 us but to listen to the best experts in the field and
14 then make reasonable and rational conclusions based
15 upon that evidence at the end of the day.

16 Representative Anchia.

17 REPRESENTATIVE ANCHIA: Just a question,
18 Mr. Chairman: How are we going to handle resource
19 witnesses? Which ones have we invited and which ones
20 are available to testify? For example: Attorney
21 General? Secretary of State? DPS?

22 CHAIRMAN TODD SMITH: I think they're all
23 here, and it was my expectation that you would want to
24 hear from all of them.

25 And so, roughly, I don't know that I



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1 calculated for the length of the opening statements,
2 but it was my intent to roughly finish the expert
3 testimony around 11:00. Recognizing that things don't
4 always go like you want them to.

5 I figured that by the time we heard from
6 the resource witnesses, that we would be able to get
7 out of hear by midnight.

8 REPRESENTATIVE ANCHIA: Would it be
9 appropriate, just as to the state of the law, to have
10 them come up just intermittently and briefly to answer
11 a specific question that we might not be clear on?

12 CHAIRMAN TODD SMITH: Absolutely. My
13 preference would be if you would, that that occur
14 outside or just after the 40 minutes. Just make note
15 of your questions of those witnesses.

16 And before we bring the next witness up,
17 we will have the opportunity to bring the resource
18 witnesses up.

19 REPRESENTATIVE ANCHIA: Thank you,
20 Mr. Chairman.

21 CHAIRMAN TODD SMITH: Okay. All right.

22 At this time, the chair will hand the
23 gavel to vice chair Pena.

24 VICE-CHAIRMAN PENA: The chair now lays
25 out SB 362 by Fraser, and calls on representative



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1 Smith to explain the bill.

2 CHAIRMAN TODD SMITH: Okay. I want to
3 take a few minutes, members and testifiers, to explain
4 this bill in case there's anyone out there, either
5 here or there, that has not had the opportunity to
6 fully understand.

7 This is not the Indiana law. I know we've
8 got people here from Indiana, but we're interested in
9 hearing from everybody, again, about the difference
10 between this bill and our current law, and what the
11 evidence would suggest the impact of that would be,
12 both on the side of the deterring fraud and on the
13 side of discouraging any legal voter.

14 Senate Bill 362. Senate Bill amends the
15 Election Code to require the voter registrar of each
16 county to provide notice of the voting requirements
17 for voting prescribed by provisions relating to the
18 acceptance of a voter for voting and a detailed
19 description of those requirements with each Voter
20 Registration Certificate or Renewal Registration
21 Certificate issued.

22 The bill requires the Secretary of States
23 to prescribe the wording of the notice to be provided
24 on the certificate. The bill makes these provisions
25 effective September 1, 2009. So anybody who registers



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1 to vote or renews their registration would receive by
2 mail this information notifying them of the changes in
3 the law.

4 Senate Bill 362 requires the Secretary of
5 State and the Voter Registrar of each county that
6 maintains a website to provide notice of the
7 certification requirements for voting on each entity's
8 respective website and requires the Secretary of State
9 to prescribe the wording of that notice.

10 The bill requires the Secretary of State,
11 in cooperation with the voter reporting organizations
12 as determined by the Secretary of State and with each
13 party who's nominated for governor or in most recent
14 general election receive 20 percent or more in the
15 total number of votes, which would be Republicans and
16 Democrats received by all candidates on Governor on
17 elections to establish a statewide effort and educate
18 voters regarding the identification requirements for
19 voting.

20 The bill also authorizes the Secretary of
21 State to use any available funds, including federal
22 funds, to implement these provisions. The bill makes
23 these provisions effective September 1, 2009.

24 Senate Bill 362 requires the training
25 standards for election judges adopted by the Secretary



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1 of State to include provisions on the acceptance and
2 handling of the identification presented by a voter to
3 an election officer in accordance with the regular
4 procedure of accepting a voter and requires each
5 election clerk to complete that part of the training
6 program. The bill makes these provisions effective
7 September 1, 2009.

8 Senate Bill 362 requires the presiding
9 judge of an election precinct to post notice with a
10 list of the acceptable forms of photographic and
11 non-photographic identification in a prominent place
12 on the outside of each polling location, and requires
13 that information to be printed using a font that is,
14 at least, 24 points.

15 Senate Bill 362 requires a voter on
16 offering to vote to present to an election officer at
17 the polling place either one acceptable form of photo
18 identification or two acceptable forms of
19 non-photographic identification, rather than the
20 voter's Voter Registration Certificates.

21 It includes, just to be clear -- the Voter
22 Registration Certificates is one of the two forms of
23 forms that is acceptable. So most people vote already
24 with photo identification. The minority of people
25 currently who simply lay down a Voter Registration



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1 Card.

2 The only change in this bill from current
3 law is that those people, in addition to laying the
4 Voter Registration Card on the table, would also have
5 to supplement back that Voter Registration Card, back
6 that up with an additional document on the list of
7 non-photo identification that is available, such as an
8 envelope from a governmental agency.

9 Any of those items, if not all of them,
10 are already on the list of non-photographic
11 identification that is acceptable at the polls.

12 The bill makes conforming changes to
13 provisions relating to a voter's statement of
14 residence. A voter with the correct certificate who
15 is not on the precinct list of registered voters, a
16 voter who is not on the certificate who is on not the
17 precinct list of registered voters and the regular
18 procedures for accepting voters.

19 Senate Bill 362 specifies that the
20 following documentation is an acceptable form of
21 photographic identification for voting: A driver's
22 license or personal identification card issued to the
23 person by the Department of Public Safety that is not
24 expired or that expired no earlier than two years
25 before the date of presentation.



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1 The United States Military Identification
2 Card that contains the person's photograph.

3 A United States Citizenship Certificate
4 issued to the person that contains the person's
5 photograph.

6 A United States Passport issued to the
7 person.

8 A License to Carry a Concealed Handgun
9 issued to the person by the DPS or a valid
10 identification card that contains the person's
11 photograph and is issued by an agency or institution
12 of the federal government or of an agency, institution
13 or political subdivision of Texas, such as -- well,
14 that may be on the next paragraph.

15 Any identification card with a photograph.
16 Senate Bill 362 adds the following documentation as
17 acceptable non-photographic proof of identification
18 for voting:

19 One, the voter's Registration Certificate.

20 Next, an original or certified copy of the
21 person's marriage license or Divorce Decree.

22 Next, court records of the person's
23 adoption, name change or sex change.

24 Next, identification card issued to the
25 person by governmental entity of Texas or the United



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1 States for the purpose of obtaining public benefits,
2 including veterans' benefits, Medicaid or Medicare.

3 Next, a Temporary Driving Permit issued to
4 the person by DPS.

5 Next, a pilot's license issued to the
6 person by the Federal Aviation Administration or
7 another authorized agency of the United States.

8 Next, a library card that contains the
9 person's name, issued to the person by a public
10 library located in the state.

11 Or next, a hunting or a fishing license
12 issued to the person by the Parks & Wildlife
13 Department.

14 Senate Bill 362 removes the following
15 documentation as acceptable proof of identification
16 for voting: A document similar to a driver's license
17 or personal identification card issued to the person
18 by an agency of another state, regardless of whether
19 the license or card has expired.

20 A non-specified form of identification
21 containing the person's photograph that establishes
22 the person's identity or any other form of
23 identification prescribed by the Secretary of State.

24 Senate Bill 362 authorizes a voter, if the
25 identification requirements are not met, to be



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1 accepted for provisional voting, only under the
2 provisions relating to the acceptance of an Affidavit
3 to cast a provisional ballot.

4 The bill requires an election officer to
5 inform a voter that is not accepted for voting because
6 of failing to present the required identification of
7 the voter's right to cast the provisional ballot under
8 those provisions.

9 Senate Bill 362 amends the Transportation
10 Code prohibit DPS from collecting a fee for a person's
11 identification certificate issued to a person who
12 states that the person is obtaining the personal
13 identification certificate for the sole purpose of
14 satisfying requirements for a photographic
15 identification for voting who is a registered voter in
16 Texas and presents a valid, Voter Registration
17 Certificate or who is eligible for voter registration
18 and submits a Voter Registration Application to the
19 department.

20 So the way I read that, you go to your DPS
21 officer, present your Voter Registration Certificate,
22 you get a free photo identification.

23 So the question is: The difficulty in
24 accessing the DPS facilities that are currently in
25 place across the state.



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Senate Bill 362 requires the Secretary of State, as soon as practicable on or after September 1, 2009, to adopt the training standards and develop the training materials required to implement the bill's provisions related to training.

The bill requires the County Clerk of each county, as soon as practical on or after September 1, 2009, to provide a session of training using the standards adopted and materials developed by the Secretary of State.

Members, do we have any questions for this?

Representative Anchia.

REPRESENTATIVE ANCHIA: Yes, Mr. Chairman, who's the House sponsor of this bill?

CHAIRMAN TODD SMITH: I presume I will be, but that decision has not been made yet.

Representative Anchia?

REPRESENTATIVE ANCHIA: If we have questions about the specific provisions in the bill, who should we direct those questions to?

CHAIRMAN TODD SMITH: Since we don't have a House sponsor and we don't have the author here --

REPRESENTATIVE ANCHIA: I have a lot of questions on the mechanics of the bill, and I'm just



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1 trying to think who's the best person to address those
2 questions to?

3 CHAIRMAN TODD SMITH: I presume I'm the
4 best person to answer those and maybe our staff can
5 see if they can find someone.

6 Travis, are you listening?

7 See if someone's available to answer any
8 questions that I can't answer on the technical aspects
9 of the bill.

10 REPRESENTATIVE ANCHIA: And final,
11 Mr. Chairman, I did notice that there is a new fiscal
12 note that is different than the fiscal note that is in
13 the Senate. I believe the fiscal note in the Senate
14 was 0. The new fiscal note is \$2 million.

15 I'm curious as to the methodology of LBB.
16 How they came up with such a radically different
17 outcome three weeks later and what they believe the
18 \$2 million is tied to.

19 I mean, I don't know. Will we have
20 someone from LBB here to answer those questions?

21 CHAIRMAN TODD SMITH: I don't believe we
22 have a resource witness from LBB but I'll be glad to.

23 REPRESENTATIVE ANCHIA: I think it's
24 fairly self-explanatory in terms of the manner in
25 which they determined that there want a fiscal note.



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1 For example, one of the provisions to
2 require the Secretary of State or require the local
3 voter registrar provide a written explanation in the
4 changes of the law every time someone registers or
5 renews their Voter Registration Certificate.

6 Is that a new provision to the bill? I'm
7 curious as to why in the Senate that the fiscal note
8 was 0, and then just three weeks later we have a
9 \$2 million fiscal note.

10 What methodology was used? What sort of
11 deliverables they believe they need to be provided?

12 CHAIRMAN TODD SMITH: My suggestion on
13 that, Representative Anchia, is that we invite --
14 please make a note of this -- those people to attend
15 our hearing tomorrow night so they would have an
16 opportunity to make a comment and to answer my
17 questions you might have.

18 Does that work?

19 REPRESENTATIVE ANCHIA: Okay. Thank you.
20 Thank you, Mr. Chairman.

21 CHAIRMAN TODD SMITH: Are there any other
22 questions?

23 REPRESENTATIVE ALLEN: Yes, I have one
24 question.

25 CHAIRMAN TODD SMITH: Representative



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1 Allen.

2 REPRESENTATIVE ALLEN: Yes. One question.

3 Are you saying to me if I showed up to
4 register, I need my Voter Registration Book?

5 CHAIRMAN TODD SMITH: No.

6 REPRESENTATIVE ALLEN: If I show up with
7 just my Voter Registration, I'm okay?

8 CHAIRMAN TODD SMITH: If you show up to
9 register, you said? I don't believe there's any
10 changes in the registration procedures.

11 REPRESENTATIVE ALLEN: To vote?

12 CHAIRMAN TODD SMITH: Yes. In this piece
13 of legislation, currently, let's make it clear as that
14 can be: Currently there is a list of documents,
15 photographic identification and a list of
16 non-photographic identification.

17 REPRESENTATIVE ALLEN: I got that list. I
18 got that.

19 CHAIRMAN TODD SMITH: Since the late 1990s
20 you have to have a document in order to vote.

21 REPRESENTATIVE ALLEN: Correct.

22 CHAIRMAN TODD SMITH: You have to have the
23 identification. That is already the law.

24 REPRESENTATIVE ALLEN: I got that already.

25 CHAIRMAN TODD SMITH: If you don't, you



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1 cast a provisional ballot, which in most instances,
2 does not count, I understand.

3 REPRESENTATIVE ALLEN: Okay. What I'm
4 trying to see is I must have my Voter Registration
5 Form?

6 CHAIRMAN TODD SMITH: My understanding of
7 the Senate legislation is you have to have two forms
8 of non-photographic identification on the list. A
9 Voter Registration Certificate is one acceptable form.

10 REPRESENTATIVE ALLEN: Okay.

11 CHAIRMAN TODD SMITH: It is not a
12 mandatory form. It is not one of the two that must be
13 shown.

14 REPRESENTATIVE ALLEN: Okay. So I can
15 have two others?

16 CHAIRMAN TODD SMITH: You can have two
17 others. That's my understanding.

18 REPRESENTATIVE ALLEN: I'm just trying to
19 get it to the point -- to the bottom of -- if I lose
20 my Voter Registration and that's with that, and I
21 still just need two other forms of I.D.?

22 CHAIRMAN TODD SMITH: That's my
23 understanding.

24 REPRESENTATIVE ALLEN: All right.

25 CHAIRMAN TODD SMITH: If I'm wrong, we'll



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1 correct that tomorrow.

2 REPRESENTATIVE ALLEN: All right.

3 CHAIRMAN TODD SMITH: Representative
4 Heflin.

5 REPRESENTATIVE HEFLIN: Just so I'm clear:
6 The new fiscal note here is saying the DPS is
7 forwarding the existing cost of using -- that the DPS
8 would absorb that cost?

9 CHAIRMAN TODD SMITH: Yes. Obviously, the
10 overwhelming majority of Texans already have the
11 photographic documentation that is required of this
12 legislation.

13 We're talking about, you know, the
14 testimony today to identify this. But my
15 understanding is that the percentage of Texans, the
16 voting-age Texans who do not have the photographic
17 identification that is not required but allowed under
18 this bill is something less than five percent of
19 voting age population.

20 That percentage of people, whichever ones
21 of them presented themselves at a DPS station and
22 said, I wish to have a photographic identification
23 free of charge that I intend to use for purposes of
24 voting, would be given a photographic identification
25 free of charge at their local DPS station. That's my



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1 understanding of how that works.

2 The reason that there is not a fiscal note
3 there is because it is an additional burden on DPS and
4 could easily be handled within available revenues when
5 you consider what a small percentage of the population
6 would be in that category.

7 And the fact that some of the people that
8 are in that category might be using it for purposes
9 other than simply voting.

10 REPRESENTATIVE HEFLIN: So a concern I
11 have is that LBB has said the Secretary of State is to
12 provide \$2 million for this education. It also says
13 that local government impact, but it doesn't say how
14 much that's going to cost local government's.

15 Who's going to pay for all this additional
16 training and who's going to pay for all this
17 additional signage? And who's going to pay for all
18 the extra staff needed to implement this?

19 CHAIRMAN TODD SMITH: Well, I think we
20 will have LBB here tomorrow, and to the extent that
21 they have deemed -- it is free for local government.

22 REPRESENTATIVE BROWN: Fiscal impact would
23 vary from county to county. Costs would include the
24 amendment both for printing signs to post at each
25 polling place, which would not be significant.



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1 Other potential costs would be associated
2 with additional training and posting information to
3 the county websites. Again, those costs are not
4 expected to be significant. People are already
5 trained. This is simply training that would occur at
6 the same time training already occurs.

7 One smaller county response anticipates
8 that the new provisions regarding casting and
9 provisional ballots would require hiring additional
10 staff, resulting in a moderate to significant cost.

11 REPRESENTATIVE HEFLIN: But you agree that
12 it's going to take more time and money to train these
13 people to be able to identify 16 different forms to
14 verify that they're legitimate?

15 REPRESENTATIVE TODD SMITH: Well, you
16 know, I just want to emphasize again that they're
17 already doing that.

18 We already have a list of photographic and
19 non-photographic identification that is acceptable at
20 the polls. You have to do that now. I presume these
21 people are already trained on what is acceptable and
22 what is not acceptable.

23 We're simply taking these two lists --
24 there are some small changes on the list, but we're
25 taking the two lists that already exists or the Senate



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1 Bill does and instead of saying you've gotta have one
2 off of the other, we're saying if you choose this list
3 that does not include photographic identification,
4 then you need to back up your Voter Registration Card
5 or whatever document you place on the table with an
6 additional non-photographic identification ever so
7 much.

8 So my presumption is that the training or
9 the extent of the training would be very similar and
10 will be different than current training but should be
11 no more burdensome than existing training in terms of
12 the impact on local governments.

13 Representative Brown and then
14 Representative Anchia.

15 And let me just say, members that want to
16 go to bed at midnight, that at some point we're going
17 to need to get to the witnesses but we're going to be
18 in trouble.

19 REPRESENTATIVE BROWN: Let me say one
20 question: You used the five-percent figure for those
21 who do not have photo ID.

22 How do the people who vote by mail, those
23 who vote from a nursing home that is provided in here,
24 the 70 and so on -- have those been subtracted in
25 order to come up with the five percent number?



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1 CHAIRMAN TODD SMITH: That's why I
2 qualified that number with we're going to hear expert
3 testimony tonight that will help us identify what that
4 is.

5 REPRESENTATIVE BROWN: Okay. Okay.

6 CHAIRMAN TODD SMITH: My general intent
7 with throwing that number out there was just to
8 present the suggestion that the overwhelming majority
9 of voting-age people already have photographic
10 identification.

11 There is a small minority of people who do
12 not. They are the minority that have the
13 constitutional right to vote.

14 And I know every member on this committee
15 takes very serious the fact that even those who do not
16 have photographic identification, do have a
17 constitutional right to vote.

18 And simply because they're a minority,
19 does not mean that we don't take that right seriously
20 and any legislation that comes out of this committee
21 is going to take that right seriously.

22 And so I was not intending to establish as
23 a matter of fact the percentage, but to simply relay a
24 general sense on my part that you're talking about a
25 small minority of legal age voters. We'll let these



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1 people tell us what percentage.

2 I'll defer to Dr. Alan.

3 CHAIRMAN TODD SMITH: Okay.

4 REPRESENTATIVE ALLEN: I wanted to ask a
5 question about the DPS reference you made, chair.

6 You said you could get your voting ID at
7 the DPS. You said just show up at the DPS office and
8 you could get your I.D. free.

9 CHAIRMAN TODD SMITH: Yes, ma'am.

10 REPRESENTATIVE ALLEN: Show up is a
11 question I have. Show up. I've got to go there.

12 CHAIRMAN TODD SMITH: To get a picture
13 taken.

14 REPRESENTATIVE ALLEN: To get a picture
15 taken and there are a lot of people who would not be
16 in a position to show up at the office.

17 The other thing I thought I heard you say
18 was that you could only use this I.D. for voting.

19 So if I showed up, if I was able to show
20 up and I had this piece of ID in my person and I
21 wanted to use it for something else, I'd be doing what?

22 CHAIRMAN TODD SMITH: No. You can't use
23 it for voting.

24 REPRESENTATIVE ALLEN: No. I want to use
25 it for something else. I can only use it for voting?



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1 Is that what you meant?

2 CHAIRMAN TODD SMITH: Well, I think that's
3 the way the Senate Bill is written. That it is free
4 for purposes -- let's see if we can find that in terms
5 of the free provision, in terms of how it's written.

6 REPRESENTATIVE BROWN: It's my
7 understanding, that in order to get the free I.D., it
8 has to be for the purposes of voting.

9 However, after you possess that, there's
10 no provision that says you can't use it for other
11 things. That's my understanding.

12 CHAIRMAN TODD SMITH: That's a good point.
13 And what the language says is, "The department may not
14 collect the fee for a Personal Identification
15 Certificate for the person who states that the person
16 is obtaining the Personal Identification Certificate
17 for the sole purpose of obtaining Section 63.1-B of
18 the Election Code. And who is registered to vote in
19 states and present a valid Voter Registration
20 Certificate."

21 REPRESENTATIVE ALLEN: But I'm concerned
22 that after I get it, I want to make sure that this is
23 not in the bill.

24 That after I get it, I voted. Now, I go
25 and maybe I need to go and cash a check or do



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1 something else or the police stop me and I need some
2 I.D.

3 I cannot use that for ID purposes?

4 CHAIRMAN TODD SMITH: To the extent that
5 that's not clear in the legislation, I would agree
6 that we should make it clear.

7 REPRESENTATIVE ALLEN: At some point, I
8 think we'll have another law.

9 CHAIRMAN TODD SMITH: Sure. I think that
10 needs to be clear.

11 REPRESENTATIVE ANCHIA: Mr. Chairman.

12 CHAIRMAN TODD SMITH: Representative
13 Anchia.

14 REPRESENTATIVE ANCHIA: Mr. Chairman, just
15 one more question about the bill: The bill that is
16 before us today is the Fraser Senate Bill.

17 CHAIRMAN TODD SMITH: That's correct.

18 REPRESENTATIVE ANCHIA: Tomorrow, we will
19 have the Brown Bill, the Heflin Bill, the Bonnen Bill
20 and the Fraser Bill, correct?

21 CHAIRMAN TODD SMITH: And we also
22 suspended the rules on the House Floor so that we
23 would have a couple of Dunham Bills and we would also
24 have a Chuck Hopson Bill.

25 REPRESENTATIVE ANCHIA: Okay.



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1 CHAIRMAN TODD SMITH: We will be dealing
2 in some manner with this general issue?

3 REPRESENTATIVE ANCHIA: Do any of them
4 have committee substitutes? Because we created a rule
5 that we were going to be able to review committee
6 substitutes with some advanced warning.

7 CHAIRMAN TODD SMITH: You know, I don't
8 know.

9 REPRESENTATIVE ANCHIA: Okay. But is that
10 something that we should discuss as a committee before
11 we take up and consider those bills?

12 CHAIRMAN TODD SMITH: Yeah. We could do
13 that. If anybody feels like any of that is a
14 surprise, then we can certainly accommodate those
15 concerns.

16 REPRESENTATIVE ANCHIA: So I just want to
17 be clear: That the Fraser Bill that was discussed
18 earlier, that the Fraser Bill has an exemption for
19 people that are 70 years old and that is not the
20 Fraser Bill, that is the Brown Bill, correct?

21 CHAIRMAN TODD SMITH: That's correct.

22 REPRESENTATIVE ANCHIA: And the Brown Bill
23 is not before us, correct?

24 CHAIRMAN TODD SMITH: That's correct. I
25 don't want to speak for Betty in terms of what is in



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1 her bill, but I believe that is in her bill.

2 REPRESENTATIVE ANCHIA: I think, yeah.

3 The question arose, and the inference was made that it
4 was in this bill. And I don't believe that. I
5 believe it is in one of the bills we're going to hear
6 tomorrow.

7 CHAIRMAN TODD SMITH: Okay.

8 REPRESENTATIVE ANCHIA: The second issue
9 related to poll-worker training. I want to make sure
10 we're talking apples to apples, Mr. Chairman.

11 You said you didn't think there would be
12 any significant increase in training. We are adding a
13 substantial, additional number of documents, and we
14 are moving from a presentment standard to an identity
15 standard. In other words, there has to be a visual
16 confirmation of identity under the Fraser Bill.

17 So that is a significantly different
18 standard. And we did hear testimony from the
19 Department of Public Safety during the interim that
20 there is a special training associated with that.

21 So I don't want anybody in the media or
22 the audience to leave thinking this is an apples to
23 apples training.

24 CHAIRMAN TODD SMITH: Yeah. I think
25 you're right about that, Representative Anchia. And



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1 for whatever it's worth, I publicly signaled my
2 displeasure with that particular provision.

3 And to the extent that it is removed in
4 the House version would eliminate any -- I think it
5 would create a bill where the additional -- the
6 additional costs of the counties is more in line with
7 what I've just described.

8 But I think you're right, that in the
9 Senate version, somebody would have to be trained on,
10 as I understand it correctly, when you like yourself,
11 for your vote to count.

12 REPRESENTATIVE ANCHIA: Mr. Chairman, I
13 appreciate your signal, and I just want to make sure
14 we talk about the Fraser Bill today. So thank you.
15 Thank you for that clarification.

16 CHAIRMAN TODD SMITH: Representative
17 Bohac.

18 REPRESENTATIVE BOHAC: Mr. Chairman, I
19 just wanted to just briefly address Dr. Allen's
20 comments a moment ago.

21 It's in Section 12 of the bill, and the
22 DPS usually issues an official ID card or Texas
23 driver's license. And this would be an ID card that
24 could be used for any other purposes for which an ID
25 card could be used for. So I think that would address



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1 your concern and it's in Section 12.

2 REPRESENTATIVE BROWN: Thank you.

3 REPRESENTATIVE BOHAC: And it's in Section
4 12.

5 REPRESENTATIVE BROWN: Thank you.

6 CHAIRMAN TODD SMITH: Any other questions?

7 REPRESENTATIVE VEASEY: Yes, sir.

8 CHAIRMAN TODD SMITH: Representative
9 Veasey.

10 REPRESENTATIVE VEASEY: Just looking
11 through the bill, I didn't see anything in there about
12 being able to use your utility bill.

13 Is there somewhere in the bill that
14 addresses being able to use your utility bill?

15 CHAIRMAN TODD SMITH: I don't believe it
16 indicated that that was eliminated from the list.

17 Yes, Representative Veasey, if you look at
18 the bottom of Page 6, it's current law and it states
19 it in this language.

20 REPRESENTATIVE VEASEY: Okay.

21 CHAIRMAN TODD SMITH: "Registration card,
22 current utility bill, bank statement. Government
23 check, paycheck or other government document that
24 shows the name and address of the voter."

25 REPRESENTATIVE VEASEY: Okay. Thank you.



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1 CHAIRMAN TODD SMITH: Okay.

2 Any other questions before we move on to
3 witnesses?

4 Okay. Can I take it back?

5 Thank you.

6 Chairman Pena.

7 At this time, we will begin with our
8 testimony. Remember the rules from a time standpoint.
9 You'll have the clock down here, which will begin as
10 soon as you begin speaking.

11 At this time the chair recognizes Todd
12 Rokita, the Secretary of State of Indiana.
13 Representative and voters and tax payers in the state
14 of Indiana who wish to testify in favor for or against
15 Senate Bill 362, welcome.

16 TODD ROKITA: Thank you, Mr. Chairman.

17 Mr. Chairman, may I begin?

18 CHAIRMAN TODD SMITH: You may.

19 TODD ROKITA: Thank you, sir.

20 Greetings from the people of the state of
21 Indiana. It's an absolute honor to be before
22 colleagues and distinguished leaders of what many of
23 us consider a very great state.

24 Every time I come into the state, which I
25 can't say is often enough, I'm reminded of the spirit



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1 of the people of Texas. Its history of independence
2 and what a leader for the country this jurisdiction
3 is. So it is truly an honor to be back.

4 In that vain, I'd like to discuss and
5 answer the questions that you pose.

6 The experience in Indiana --

7 CHAIRMAN TODD SMITH: Secretary Rokita,
8 you may have started without stating your name and who
9 you represent. Would you please just do that for
10 these purposes.

11 TODD ROKITA: You just did when you
12 introduced me.

13 CHAIRMAN TODD SMITH: There are some
14 people who believe if you don't do it, it may create a
15 problem with the transcript.

16 TODD ROKITA: Okay. I'm Todd Rokita of
17 the aforementioned person. I'm the Secretary of State
18 of Indiana.

19 CHAIRMAN TODD SMITH: Thank you.

20 TODD ROKITA: And we do have a Photo ID
21 law without exception.

22 But I am not here, as I was getting ready
23 to say at all, to presume to tell you fellow leaders
24 what ought to be in the state of Texas. We believe
25 too much in state's rights like you do to do something



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1 like that.

2 I am here, and in looking at your
3 biography, see that we have a good deal of lawyers on
4 the committee, as am I.

5 Please consider me a fact witness. So I'm
6 to answer questions about how things went in Indiana.
7 Not to ignore, Mr. Chairman, your request to try to
8 extending what is Texas law and what this bill does.

9 As I go through my testimony, which I
10 don't expect to take all of ten minutes, hopefully
11 some of yours questions will be answered and I'm happy
12 to answer them directly afterwards.

13 This year the country and especially
14 Indiana, because we grew the man from the year 7 to
15 21, we celebrate the 200th anniversary of Abraham
16 Lincoln's birthday.

17 Yet in many parts of the country, and
18 until recently in Indiana, we were electing our
19 leaders as if Abraham Lincoln was still on the ballot.
20 In fact, he's the one that helped invent the precinct
21 structure, and we used signatures on written poll
22 books back then we used on the ballot because that was
23 the best technology we had.

24 We have seen more election reform in the
25 last eight years or so than we have seen since the



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1 Voting Right Act of 1965.

2 And we that sentence, I just said a
3 mouthful. We need to start voting how we live in the
4 21st century. And with all the accessibility that we
5 have introduced into the process, Mr. Chair, since the
6 amendments to the United States Constitution, up to
7 the federal statutory changes that led to the Voters'
8 Rights Act in 1965, to the whole slew of state
9 accessibility measures and now most recently another
10 piece of legislation called the Help America Vote Act,
11 makes voters and the process more and more acceptable
12 accessible.

13 What photo ID in Indiana said if you don't
14 start adding another bumper rail to all that
15 accessibility with measures of integrity like photo
16 ID, then you won't have a process that people will
17 believe. If people stop believing in the process,
18 voter turn-out goes down. When voter turn-out goes
19 down, we lose the republic.

20 So when my good friend Raphael Anchia
21 says, what is the mood on the table here? Why is the
22 voter turn-out so low?

23 In Indiana we say people administering the
24 elections don't take it seriously enough. They don't
25 even take it as seriously as the 18-year old who



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1 rented a video, rented me a video last Friday night
2 when he asked for my ID.

3 In the one academic study that compares
4 apples to apples that studied Indiana's voter turn-out
5 before photo ID and after ID with similar elections,
6 it was the Millial Study from the University of
7 Missouri.

8 At that time there were only four or live
9 elections we had in Indiana. Turn-out went up five
10 percent. It went up around that time and I expect it
11 will go up some time into the future.

12 So photo ID wasn't the magic pill to voter
13 turn-out, nor was it expected to be, but it certainly
14 hasn't deterred turn-out and, in fact, has increased
15 it.

16 Again, we believe because the hypothesis
17 was proved that once you put a balance into the
18 process, accessibility and integrity, you get a
19 process that people believe in.

20 Identity theft is the highest-growing
21 crime in the United States and in many parts of the
22 world. Yet those that want to come down into the
23 weeds on this issue and demand evidence -- and I'll
24 get to the reasons why it's very hard to produce
25 evidence -- want to have you believe that while



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1 identity theft exists and the risk of it accrues, in
2 every transaction we have in our life's -- financial,
3 social, whatever -- that somehow there's a bubble, an
4 impenetrable bubble around our election process where
5 no identity theft can occur.

6 And I just don't think and any reasonable
7 person doesn't think that can be the case. 80 percent
8 of voters and taxpayers across this country don't
9 think it can be the case.

10 And again, if the purpose of photo ID is
11 to instill confidence in the process, again, then that
12 80-percent public opinion, well, we shouldn't be
13 making our discussions based off of polls, that has
14 relevance. That matters when you're talking about
15 instilling confidence, whether you personally believe
16 there's evidence of fraud or not.

17 I'm pleased to note for the record that
18 the Carter-Baker Commission that was referenced here
19 in your deliberations for photo ID at the polls.

20 Is this right? Can I sleep at night?
21 Someone on your committee or an observer with the
22 committee asked that question. You bet I can because
23 this means that every vote counts equally.

24 There are two kind of disenfranchisement.
25 There's the kind that we all know to be wrong, and I



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1 think everyone here in this room has actively worked
2 to deter. And by and large, it it's out of our
3 institutions and our process of voting.

4 But there's another kind of
5 disenfranchisement that occurs when those honest
6 voters, those votes of you, me and our constituents
7 are cheated, are diluted by those who would cheat the
8 system. And photo ID makes sure that can't happen.

9 With regard to evidence, what we've
10 experienced in Indiana is that first of all -- and
11 this shouldn't be unique to Indiana -- the crime of
12 voter impersonation is one that's very hard to collect
13 evidence on. It happens in an instant and then the
14 actors disburse.

15 It's not like you have a dead body after
16 the act occurs. So to argue that there's no evidence,
17 we haven't produced any, is to be disingenuous to the
18 kind of act that we're talking about.

19 Secondly-- and this may only be true in
20 Indiana, I suspect -- our prosecutors, the only ones
21 who can bring criminal charges in the state are
22 elected. And for me that means two things, and that's
23 partisanly elected.

24 At its worse. It means that they won't
25 file charges for one of two reasons. If they file



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1 against someone in their own party, they're looked at
2 as traders. If they file against someone in the other
3 party, they're looked at as partisan.

4 The higher road to take with regard to
5 separate elected prosecutors, and I think that's also
6 true with respect to Indiana and across the nation, is
7 that there is very violent crime out there that
8 deserves and needs to be punished.

9 Voter fraud is not violent fiscally. It's
10 harming. But to convince a prosecutor that they
11 should take a deputy off the violent crime or other
12 terrible acts to go learn Indiana's or whatever
13 jurisdiction's Election Code -- depending on the size
14 of the county, especially -- is just not going to
15 happen.

16 It's unpractical, and they would argue
17 sometimes it's unreasonable. That does not mean the
18 crime didn't occur. That does not mean there is no
19 evidence. That just means it hasn't been prosecuted
20 for one or more of reasons to which I just explained.

21 With that, it looks like I have
22 19 seconds. I'm happy to start taking your questions.
23 Thank you very much for having me.

24 CHAIRMAN TODD SMITH: All right. Let me
25 start your clock here.



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1 The Supreme Court opinion on Page 3
2 indicates that "the District Court found that the
3 petitioner's had not introduced evidence of a single
4 individual Indiana resident who'll be unable to vote
5 as a result of the legislation or who will have his or
6 her right to vote unduly burdened by its
7 requirements."

8 Can you address to any degree that comment
9 and were you present at all? Were you involved in the
10 District Court proceedings and aware of the state of
11 the evidence that caused that District Court judge to
12 reach that conclusion?

13 TODD ROKITA: Yes. I mentioned that a lot
14 of us are lawyers and we may have had mothers like
15 mine who wanted us to be a medical doctor, who had
16 shook her head in disbelief when I told her I was
17 going to law school.

18 I said, "Don't worry, mom. Maybe one day
19 I'll get to argue a case before the United States
20 Supreme Court." Well, I didn't get to argue it, but I
21 was a defendant all the way up.

22 So I do have some very personal experience
23 with it. And in that vain, I'm passing out to you a
24 document that I've authored and titled "Indiana's
25 Photo ID Voting Requirement." My office authored it.



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1 Actually, it has code sites. It dissects Indiana's
2 law for your staff's reference and gives you the site
3 so you can make comparisons.

4 It is true, the defendants did not produce
5 one person who was genuinely disenfranchised by this
6 law. We took a lot of time. We had hearings just
7 like this. None of the arguments brought by any of
8 your committee members on either side of the issue are
9 making a new argument in my eyes. We've been through
10 this before.

11 And because of that we made some changes
12 along the way, and the result was a very narrowly
13 draft crafted law that has resulted as the court found
14 in that one disenfranchisement. And that's not to say
15 if they did find one that the case would be lost.

16 But the Supreme Court found was that there
17 was a very valid and reasonable interest in the states
18 putting parameters on their elections. What I was
19 talking about earlier, to balance all that
20 accessibility with members of integrity.

21 CHAIRMAN TODD SMITH: Now, despite that
22 balance by the Supreme Court that there was not a
23 single voter who could establish an unreasonable
24 burden, the dissenting opinion in the case indicates
25 that 34 in Marion County -- and I want to give you an



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1 opportunity to address this -- in Marion County -- and
2 let me just be clear: Your form of Photo ID
3 Legislation is, and I don't expect you to it admit
4 that it's onerous -- but it's certainly the most
5 onerous form of identification legislation in the
6 United States at this time?

7 Is that your understanding?

8 TODD ROKITA: No. It's the most
9 progressive.

10 CHAIRMAN TODD SMITH: I'll accept that.
11 I'll accept that.

12 TODD ROKITA: And I'll explain.

13 CHAIRMAN TODD SMITH: Well, it indicates
14 that in the dissenting opinion, in the Supreme Court
15 opinion, that in Marion County there were 34
16 provisional ballots that were cast as a result of
17 legislation, but that only two provisional voters made
18 to the County Clerk's Office within ten days.

19 It indicates that all 34 of these aspiring
20 voters appeared at the appropriate precinct. That 33
21 of them provided a signature and every signature
22 matched the one on file. And that 26 of the 32 voters
23 who's ballots were not counted in the history of
24 voting in Marion County elections.

25 Now, that's one county that for the



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1 dissenting opinions sites in the big states. And it
2 does raise questions about the provisional ballot
3 mechanism chosen in Indiana versus other states in
4 terms of the extent to which that burden of going
5 downtown has, perhaps, is not an unreasonable burden
6 but may, in fact, nevertheless, result in unacceptable
7 proportions of otherwise, legal votes not counting.

8 Why is that not a legitimate concern?

9 TODD ROKITA: Well, first of all, you'd
10 have to understand: There was no fact trial on this
11 case, and that evidence went in uncontested in a reply
12 brief by the ones who filed suit.

13 So we weren't able to, you know, combat
14 that in court, and I think that was -- it was a bad
15 decision on the part of the dissenting judge, a
16 partisan appointment, Court of Appeals or not. Just
17 like the two in majority were. Partisan appointments.

18 CHAIRMAN TODD SMITH: Do you have a
19 specific response to that particular county or you
20 just don't know?

21 TODD ROKITA: No. First of all, I would
22 say that it's not unreasonable, and we give ten days,
23 we'll hold up the election results for ten days, if
24 they forgot their photo ID, didn't even have one at
25 the time, to prove their identity, which is -- when



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1 you say a strict voter law.

2 Georgia allows two days. I'm not sure
3 whether this bill requires a time to come back or not.
4 We also have exceptions to that.

5 And the testimony would be in response to
6 that, well, if until you interview those witnesses,
7 you don't know if they were ever valid voters of
8 Marion County. Those 36 could have all been cheating
9 the system.

10 The point being: It's a confidence
11 builder.

12 CHAIRMAN TODD SMITH: Do you know -- this
13 legislation was passed when?

14 TODD ROKITA: 2005.

15 CHAIRMAN TODD SMITH: And so we have had
16 what? Two elections since then?

17 TODD ROKITA: No, sir. We've had nine in
18 the state of Indiana. All successful.

19 CHAIRMAN TODD SMITH: Can you help me know
20 the number of provisional ballots that have been cast?
21 Not total provisional ballots, but provisional ballots
22 cast because people do not have the proper
23 identification at the polls?

24 TODD ROKITA: No.

25 CHAIRMAN TODD SMITH: Unknown?



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1 TODD ROKITA: There's none.

2 CHAIRMAN TODD SMITH: Because they're
3 mixed in together?

4 TODD ROKITA: No. All the professional
5 ballots -- you have to have the reason why they cast
6 provisional ballots, but that data is not casted and
7 collected at the state level. You'd have to
8 investigate in every county.

9 But we do all around and ask and we do get
10 many calls on election day. It's a non-issue.

11 CHAIRMAN TODD SMITH: Okay. When you say
12 that, you're saying that your impression is the number
13 of provisional ballots that are cast because people in
14 the community do not have the proper identification is
15 minuscule --

16 TODD ROKITA: Compared to all the reasons
17 for casting a provisional ballot.

18 CHAIRMAN TODD SMITH: Okay.

19 TODD ROKITA: I don't want to put
20 percentages out there, but if you had 10 or 100, it
21 would be, you know, in the neighborhood of 2 or 20 but
22 I don't want to --

23 CHAIRMAN TODD SMITH: I'm not sure I
24 understand what you're saying.

25 You're saying if you had 10 or 100. Tell



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1 me --

2 TODD ROKITA: If you had ten provisional
3 ballots, and, again, it's just anecdotal.

4 CHAIRMAN TODD SMITH: Yes.

5 TODD ROKITA: Maybe two would be for an ID
6 reason. But then we don't know if those two actually
7 came and presented an ID or if they shouldn't have
8 been voting in the first place.

9 CHAIRMAN TODD SMITH: I understand.

10 So you just can't tell me how many
11 statewide provisional ballots are counted or the
12 percentage of those provisional ballots -- well, I
13 didn't ask that question.

14 You can't tell me the number of
15 provisional ballots cast statewide, give me a general
16 sense of how many there are, or the percentage of
17 those ballots that are ultimately counted pursuant to
18 the manner in which a provisional voter goes downtown
19 and does whatever he has to do in order for it to
20 count? You don't know that?

21 TODD ROKITA: Without a valid ID
22 requirement.

23 CHAIRMAN TODD SMITH: Okay.

24 TODD ROKITA: No.

25 CHAIRMAN TODD SMITH: Questions, members?



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1 Yes, Representative Anchia.

2 REPRESENTATIVE ANCHIA: Welcome to Texas,
3 Mr. Secretary. It's good to see you.

4 TODD ROKITA: Thank you.

5 REPRESENTATIVE ANCHIA: The Secretary and
6 I are members of the Rodel Fellowship, a bipartisan
7 fellowship, so we have had the good fortune of getting
8 to know each other over the last couple of years and
9 have had, I think, well-reasoned disagreements on this
10 particular issue. But we also found some common
11 ground.

12 I want to begin the questions with maybe
13 the common ground that you and I have found. Because
14 I know while we disagree on voter ID, you have
15 implemented strategies in your state to increase
16 ballot access. And I think you eluded to that earlier
17 in your testimony where you talked about vote where
18 you live and making voting locations more accessible
19 to people.

20 And can you talk to me a little bit about
21 those strategies and how much they costed. And let me
22 frame that in the context of Carter-Baker.

23 Both you and I referred to Carter-Baker,
24 but I think you and I would agree that the Photo ID
25 requirement is just one of 87 different



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1 recommendations made by Carter-Baker.

2 So if you could talk about in a broader
3 context, things that you did in your state to increase
4 access to the franchise and which ones of those would
5 be consistent with expanding the franchise under
6 Carter-Baker.

7 Finally, how much do they cost.

8 TODD ROKITA: Thank you.

9 The first example that comes to mind
10 that's directly relevant to the photo ID debate that
11 we had and the bill that was actually passed had to do
12 with how we came together after the vote.

13 And I think no legislation is going to do
14 that for you. I think it's going to be leadership
15 here. Our leadership on this committee and have that
16 fan out in a bipartisan fashion; which I did and I'm
17 not here to blow my own horn.

18 But what worked for us is that those of us
19 that agreed with the law I put in a room the same room
20 with those who disagreed with the law.

21 And I said, "We're not going to leave this
22 room until we have a cohesive plan for reaching out to
23 those that some thought would be disenfranchised and
24 some thought would not be and come together with a
25 comprehensive outreach.



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1 And I think that's one of the key things,
2 depending on how the vote goes here, that you all can
3 do together.

4 So those who have sued me and still
5 continue to sue me, like the League of Women Voters,
6 were there that room and we continue open lines of
7 communication, and here's how to best reach folks.

8 And a good idea, though, Rafael, not just
9 public, TV and radio ads, but purchasing some money
10 behind it. But also non-traditional forms of
11 advertising, like inside and outside of buses, for
12 those that, you know, would see it that probably
13 wouldn't have a driver's license. We wanted them to
14 know --

15 REPRESENTATIVE ANCHIA: I like the
16 advertising idea. How much did your budget increase?

17 TODD ROKITA: We used the Help America
18 Vote funds, and so we coached it couched it as part of
19 a larger Get out the Vote strategy that we were
20 supposed to do in Get Out the Vote Act.

21 REPRESENTATIVE ANCHIA: How much did you
22 spend in that?

23 TODD ROKITA: \$1.2 million.

24 REPRESENTATIVE ANCHIA: Okay. That was
25 for the advertising piece?



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1 TODD ROKITA: For the advertising piece
2 and some was for training and education of the poll
3 workers that the chair mentioned. That was for the
4 first elections and we kind of front-loaded it because
5 this was newer for everybody.

6 REPRESENTATIVE ANCHIA: Right.

7 TODD ROKITA: But I will say in Indiana,
8 which is a blue state right now, for those who think
9 that this is going to drive down turn-out, I mean,
10 Indiana is a fairly conservative state. It hasn't
11 been blue in 45 years. It is today with the Photo ID
12 law.

13 We had a whole bunch of new voters come in
14 and I love to see it and that's because Mrs. Clinton
15 and Mr. Obama campaigned in Indiana's primary state,
16 as well.

17 REPRESENTATIVE ANCHIA: How much did they
18 spend on advertiser turn-out? I just want to make
19 sure I'm not hearing what I know you're not saying is
20 that turn-out went up because of Voter ID.

21 TODD ROKITA: No. No. No. I told you
22 before that photo ID is not a magic pill to make --
23 that's not the point.

24 My point is that we had a whole group of
25 new voters participate in Indiana this time and no one



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1 found the photo ID to be an issue with all these new
2 voters. That's the point.

3 REPRESENTATIVE ANCHIA: Back to the
4 strategies you used -- what makes Carter-Baker
5 consistent?

6 TODD ROKITA: To finish the earlier point,
7 we front loaded the 1.2 million.

8 So even though we had all the early voters
9 in Indiana this time, for education and outreach, we
10 probably only spent \$200,000 or so.

11 And that showed me the point: It's not a
12 conclusive point but it's making me wonder how much
13 you really have to spend on education and outreach
14 versus very laser-like pointed outreach.

15 Like, for example, because we had so many
16 new college voters in Indiana this time excited over
17 the candidates, we simply mailed a postcard to every
18 new registrant, college or otherwise, and reminded
19 them: Here's the five things you have to bring on
20 election day and one of those is a photo ID.

21 REPRESENTATIVE ANCHIA: How much did that
22 cost?

23 TODD ROKITA: That was probably half of
24 the -- that was probably \$100,000, maybe.

25 REPRESENTATIVE ANCHIA: How big is Indiana



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1 population?

2 TODD ROKITA: Six point some million.

3 REPRESENTATIVE ANCHIA: So about the size
4 of Dallas, Fort Worth?

5 TODD ROKITA: Yes.

6 REPRESENTATIVE ANCHIA: How many
7 registered voters?

8 TODD ROKITA: Just over 4.5, 4.89.

9 REPRESENTATIVE ANCHIA: So less than a
10 fourth of the State of Texas?

11 TODD ROKITA: Yes.

12 REPRESENTATIVE ANCHIA: I'm just trying to
13 figure out: There's no money in the Fraser Bill, as
14 far as I can tell or no additional advertising
15 requirements. Nothing to put forward for training as
16 far as I can tell from the bill, nothing what you all
17 did in Indiana.

18 You talked a little bit about where. Talk
19 to us a little bit about where you live and where you
20 work, very quickly.

21 TODD ROKITA: Yeah. You know, we have to
22 vote how we live in the 21st century. So you also see
23 Indiana trying to pass a bill that would allow for
24 vote centers, where it gets rid of the precinct
25 structure on election day.



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1 REPRESENTATIVE ANCHIA: Are these mega
2 precincts?

3 TODD ROKITA: Well, they're mega
4 precincts, but it's more to the point that you can
5 vote in a grocery store or you can vote as you drop
6 your kids off at day care. At school. You don't have
7 to race back to any particular part of the county to
8 try to --

9 REPRESENTATIVE ANCHIA: Right.

10 TODD ROKITA: And you can use technology
11 to do that now. And you see me, the Secretary of
12 State, promoting a bill of this section in Indiana
13 that allows for on mine voter registration for not
14 everybody, but for some of us that may have already
15 have our data in a government database like the Bureau
16 of Motor Vehicles. I think that's maybe what you call
17 DPS.

18 REPRESENTATIVE ANCHIA: Uh-huh.

19 TODD ROKITA: To do things like that, but
20 photo ID is the springboard, that security measure,
21 that allows you to do some of these other things and
22 retain the confidence of the taxpayer and the voter.

23 REPRESENTATIVE ANCHIA: You mentioned in
24 your testimony that photo ID stops the cheating,
25 right?



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1 TODD ROKITA: Say what now?

2 REPRESENTATIVE ANCHIA: You said people
3 who are cheating the system -- photo ID makes it so
4 that that doesn't happen; is that right?

5 TODD ROKITA: Where did I say this?

6 REPRESENTATIVE ANCHIA: Just a couple
7 minutes ago.

8 TODD ROKITA: No. What I said: It's a
9 confidence builder. So whether you believe people are
10 cheating the system or not, what it is is that other
11 guardrail. Again, all that accessibility is a measure
12 of integrity over time.

13 REPRESENTATIVE ANCHIA: So, essentially,
14 it is your contention that when people believe that
15 the system is better, then, they're going to
16 participate more?

17 TODD ROKITA: Absolutely.

18 REPRESENTATIVE ANCHIA: I just read a
19 study from MIT in Columbia from January or February of
20 last year, that said just the opposite. That there's
21 absolutely no correlation related to deterring.

22 Are you familiar with the study?

23 TODD ROKITA: No.

24 REPRESENTATIVE ANCHIA: Okay.

25 TODD ROKITA: And you know, a study that's



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1 1,000 miles away or so from Indiana doesn't hold
2 weight with me. I'm the guy on the ground in Indiana.
3 I know what I see.

4 REPRESENTATIVE ANCHIA: So with your
5 testimony in Texas, when you're miles and miles away
6 -- how much deference should we give to your
7 testimony?

8 I'm just offering it up as an admonition,
9 because I think you might undermine your own testimony
10 by doing that.

11 TODD ROKITA: Hey, I told you at the very
12 beginning, I'm not here to say what I feel ought to be
13 here. I'm here to say what happened in Indiana.

14 REPRESENTATIVE ANCHIA: Okay. Can you
15 talk a little bit about the system in Indiana.

16 TODD ROKITA: Sure.

17 REPRESENTATIVE ANCHIA: In Texas, we've
18 seen little to no cases of voter impersonation. All
19 right. I've studied this for three sessions. Seen
20 people to go interview folks who allegedly did voter
21 impersonation. We haven't been able to find that.

22 At the same time, I chaired a subcommittee
23 that there is mail-in ballot fraud. Like when you do
24 see fraud, it's typically in mailing ballots, followed
25 maybe thereafter by official corruption by poll



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1 workers or something like that.

2 I'm curious that in Indiana, you have a
3 strict photo ID standard on in-person photo or
4 in-person voters, but you have no a no-excuse system
5 for mailing ballots. And I'm wondering how that might
6 square with Texas where we do have instances of fraud
7 with mail-in ballots that are wholly outside of the
8 Fraser Bill that we have in front of us today, but the
9 case where we don't have a lot of that evidence in
10 terms of voter impersonation.

11 We're trying to -- let's say, how did you
12 deal with that in Indiana? You don't even have to be
13 a senior or disabled in Indiana to do mail-in ballots,
14 right?

15 So how do you deal with, especially in
16 light of your comment that with photo ID, it's harder
17 to cheat?

18 TODD ROKITA: Well, first, I'd say you've
19 been given bad information.

20 Indiana is not a no-excuse absentee voting
21 state.

22 REPRESENTATIVE ANCHIA: Okay.

23 TODD ROKITA: You have to have the
24 excuses, boxes that you fill out.

25 REPRESENTATIVE ANCHIA: What are those?



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1 TODD ROKITA: I'm going to have to go
2 through them again.

3 You have to be over the acreage of 65.
4 You have to be out of the county the entire time the
5 polls are open or at work the entire time the polls
6 are open.

7 It could be a person with disabilities.
8 Those kind of reasons.

9 And we, in fact, did have reforms to
10 mail-in absentee process as well, it's just that the
11 papers weren't interested in that.

12 REPRESENTATIVE ANCHIA: Did you include a
13 photo ID standard for mail-in?

14 TODD ROKITA: We had a companion bill that
15 went with the Photo ID Bill. But it would be
16 academically dishonest for us to argue on one hand you
17 need a photo ID so that when you show up to the poll,
18 you can show that you are who you say you are and try
19 to do the sale thing with mail-in.

20 Because if you don't have a face with a
21 photo, the purpose of the photo is moot now.

22 So of course, we didn't require a photo be
23 put in there but we had a companion bill that no one
24 wrote about. And that got passed that now made when
25 you checked those boxes that I just mentioned, under



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1 penalty of perjury, so now a prosecutor has something
2 to go on.

3 REPRESENTATIVE ANCHIA: Can you tell me
4 real quickly what those boxes are.

5 TODD ROKITA: The 65 years or older. The
6 out of county.

7 REPRESENTATIVE ANCHIA: So the exemption
8 boxes?

9 TODD ROKITA: The exemption boxes, yeah.

10 REPRESENTATIVE ANCHIA: Okay.

11 TODD ROKITA: And then if you're a
12 third-party and you're turning in absentee-ballot
13 application you have to fill in the Affidavit as to
14 who you are, where you got these applications, what
15 your role in all of this is under the penalty of
16 perjury again, so the prosecutor has something to go
17 on.

18 And then we made election nearing in front
19 of someone with an absentee-ballot a felony, which it
20 hadn't been in Indiana.

21 So we did take measures, again, not photo
22 ID measures because they don't take make academic
23 sense, but we did make measures.

24 REPRESENTATIVE ANCHIA: One of the things
25 we're looking at in the state is also requiring that



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1 anybody who handles mail-in ballots become deputized.

2 Have you guys gone there in Indiana?

3 TODD ROKITA: We thought about it, and
4 still by adjusting and it trying to figure out if that
5 would make sense in the state.

6 REPRESENTATIVE ANCHIA: It's one bill that
7 I filed.

8 TODD ROKITA: And it's actually, something
9 Indiana had and got rid of. And so the question is:
10 Do you go back to that or not and that's what we're
11 debating?

12 REPRESENTATIVE ANCHIA: Okay. And just to
13 reiterate your testimony on the questioning from
14 Chairman Smith: You're unaware --

15 CHAIRMAN TODD SMITH: Representative
16 Anchia, we've got ten minutes left for people to ask
17 questions on the committee.

18 REPRESENTATIVE ANCHIA: I'm sorry?

19 CHAIRMAN TODD SMITH: Ten minutes left for
20 questions on the committee:

21 REPRESENTATIVE ANCHIA: For secretary
22 Rokita?

23 CHAIRMAN TODD SMITH: Yes.

24 REPRESENTATIVE ANCHIA: Thank you. And I
25 want to be respectful of everyone's time.



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1 How many voters in Indiana were forced to
2 cast provisional ballots because they were not deemed
3 to have adequate ID? Our recollection is it's your
4 testimony you don't know.

5 TODD ROKITA: I don't know, and
6 antidotally, it's a very low number.

7 REPRESENTATIVE ANCHIA: Did you commission
8 a study of that? Did you think that that was
9 important, maybe, to study that number and figure out
10 how many people?

11 TODD ROKITA: No. Because we operate an
12 800 election line on and around election day and we
13 just didn't see it being an issue.

14 So if we saw it popping up on the phone
15 line and through other resources, we would have
16 probably commissioned one with you it was just a non
17 event.

18 REPRESENTATIVE ANCHIA: Have you reached
19 out to the 34 people in Marion County who were
20 allegedly disenfranchised in the court briefs that
21 were submitted? Did you inquire of that group of
22 people?

23 TODD ROKITA: You know, interestingly we
24 tried to, but the district clerk who was the same
25 clerk who put in that testimony at the appellate level



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1 would not give us access to the names.

2 REPRESENTATIVE ANCHIA: And did you try an
3 Open Records Request?

4 TODD ROKITA: No.

5 REPRESENTATIVE ANCHIA: Okay.

6 TODD ROKITA: An Open Records Request
7 might be problematic because you might get -- you
8 might get the names, but the voter still has
9 superseded the ballot. So it's not like we could have
10 gone at the time.

11 REPRESENTATIVE ANCHIA: But if you had
12 input into the address, you might be able to go --

13 TODD ROKITA: But the point being, I don't
14 know that that's public record. I'm not sure that it
15 is because you want to protect the secrecy of the
16 ballot.

17 Me, it's one thing, but you open a
18 slippery slope up to overzealous campaigns in that
19 first days after election trying to harangue people
20 into coming in and we are very protective of the
21 people's privacy.

22 CHAIRMAN TODD SMITH: Representative
23 Anchia, I've got to move to other members asking
24 questions. I'm going to have to cut it off.

25 REPRESENTATIVE ANCHIA: Thank you,



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1 Mr. Chair.

2 If I have additional questions, can I
3 submit those in writing?

4 CHAIRMAN TODD SMITH: Sure. And it might
5 be helpful, members of the committee, whenever we
6 finish a witness, if anybody would, kind of, raise
7 their hand if you wish to ask questions, that would
8 give me some sense of how many people wish to.

9 Representative Brown.

10 REPRESENTATIVE BROWN: Thank you.

11 Mr. Secretary, you mentioned that you had
12 a companion bill. So this was in the same session you
13 tried to address the mail-in ballots, as well?

14 TODD ROKITA: Yes, and that bill passed.

15 REPRESENTATIVE BROWN: Both of them
16 passed?

17 TODD ROKITA: Yes.

18 REPRESENTATIVE BROWN: But you don't have
19 such you see we don't have such a companion bill.
20 It's a bit late in our session to address the mail-in
21 ballot. So, right now, do you have any suggestions
22 for us addressing mail-in issue or do you see us
23 proceeding in just trying to come out with a good
24 Photo ID Bill at this session and address the mail-in
25 ballot issue later?



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1 TODD ROKITA: Are you a no-fault state or
2 do you have the boxes, as well, that you fill out when
3 you make an absentee-ballot request? Do you have a
4 special reason to vote absentee-ballot by mail?

5 REPRESENTATIVE BROWN: Yes.

6 TODD ROKITA: Yes, I would do the same
7 things that we did, if you can. But it's not
8 necessarily related to photo ID. Photo ID doesn't
9 stand on its own, but I think those measures that we
10 implemented that I already outlined in my testimony
11 would be a good start.

12 CHAIRMAN TODD SMITH: You can you
13 summarize those again. What are they?

14 TODD ROKITA: That the application, the
15 whole form, is under oath. The whole reason you put
16 down for needing an absentee-ballot. So if you lied
17 there, at least, a prosecutor can go after penalties
18 of perjury.

19 No. Two, that election nearing in front of
20 someone with an absentee-ballot is a felony.

21 And the third one, if you're a third-party
22 turning in an absentee-ballot applications you, too,
23 have to sign an Affidavit as to who you are, what your
24 role is, how you came upon these applications.

25 CHAIRMAN TODD SMITH: Thank you.



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1 Representative Brown.

2 REPRESENTATIVE BROWN: We've gotten a lot
3 of feedback from people saying well, you know, a lot
4 of the fraud takes place in middle America and so on.

5 But I feel like at this point we're taking
6 a very baby steps in securing our elections just by
7 addressing the photo ID at this point we can address
8 the other later.

9 TODD ROKITA: It's a huge confidence
10 building step.

11 REPRESENTATIVE BROWN: I agree thank you
12 very much, much.

13 CHAIRMAN TODD SMITH: Representative
14 Heflin.

15 REPRESENTATIVE HEFLIN: Thank you. Real
16 quickly: On your provisional ballot -- when they come
17 in and they don't have the proper ID, that it's marked
18 special provisional ballots, and they have ten days to
19 cure -- is that what I understood you to say.

20 TODD ROKITA: That's right.

21 REPRESENTATIVE HEFLIN: And how many
22 people came back and actually cured their ballots? Do
23 you know?

24 TODD ROKITA: Again, we don't have
25 statewide data on that, but there were a lot of other



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1 reasons forecasting our provisional ballot.

2 REPRESENTATIVE HEFLIN: Right.

3 TODD ROKITA: But not having a photo ID is
4 an extreme minority reason.

5 REPRESENTATIVE HEFLIN: So that was a
6 small reason for provisional ballots?

7 Okay. And the super centers -- the voting
8 centers -- are they all real time computers so if they
9 vote, John Doe in your one precinct and you're two
10 precincts over, and John Doe votes again -- does that
11 flag --

12 TODD ROKITA: Yeah. The electronic poll
13 votes are tied into our statewide voter file. So when
14 Todd Rokita, because of the kind of guy I am, knows
15 when I try to vote again I'll get stopped.

16 But the machine, sir, the voting machines,
17 are not, this is not Internet voting of any kind.

18 REPRESENTATIVE HEFLIN: Okay. And also,
19 do college kids get to use their college ID or do they
20 have to go --

21 TODD ROKITA: No. Indiana requires or
22 federal ID, if a college person had a passport, that
23 would work.

24 But some of our college students have come
25 in with California driver's license, for example, or



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1 Michigan or wherever. And based on that piece of ID,
2 we do not let them vote because that's pretty good
3 evidence that they're residents of Michigan or
4 California and should be voting there.

5 REPRESENTATIVE HEFLIN: Okay. Now, as to
6 the educational requirements: Did you have Voter
7 Registration driver's? Helping people get them
8 prepared?

9 TODD ROKITA: We've got education
10 outreach. We go to the State Fair. We go to what we
11 call Indiana Black Expo.

12 REPRESENTATIVE HEFLIN: You took it to the
13 neighbors?

14 TODD ROKITA: It was a partnership, I
15 mentioned. That's key. One office can't get out like
16 that. You have got to develop a coalition of the
17 willing and unwilling.

18 REPRESENTATIVE HEFLIN: And as to your
19 Indiana ID -- did the DPS -- is that provided by your
20 Department of Motor Vehicles?

21 TODD ROKITA: Yeah. It's free of charge.

22 REPRESENTATIVE HEFLIN: And do they go
23 like to nursing homes and senior centers and help
24 those people get those IDs.

25 TODD ROKITA: We have a mobile DMV that



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1 does go out. Yeah, they do do those things, actually.

2 REPRESENTATIVE HEFLIN: And do you know
3 how much that costs?

4 TODD ROKITA: No. It's in their regular
5 course. They go out anyway. So there's no additional
6 costs.

7 I would also say that if one of the
8 assisted living facilities is a precinct, that is an
9 exception. Because that is, again, remember I said,
10 it's narrow. So it's an exception there that said
11 well, this is an example of people who probably never
12 leave the ground and even for voting, it's a precinct
13 so they're an exception.

14 REPRESENTATIVE HEFLIN: I pass.

15 CHAIRMAN TODD SMITH: Representative
16 Bohac.

17 REPRESENTATIVE BOHAC: Mr. Secretary,
18 welcome to Texas. I had a couple of questions for
19 you. One of them is it's a question it happens in an
20 instance and the act is disbursed. I assume you were
21 talking about voter impersonation and that's why it's
22 so tricky at the catch. Is that the right context in
23 which you were talking about that particular --

24 TODD ROKITA: Yes. I hope I didn't leave
25 another one. But that's what was I meant.



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1 REPRESENTATIVE BOHAC: I assume that most
2 of the arguments here, you actually heard in your
3 state.

4 TODD ROKITA: Yes.

5 REPRESENTATIVE BOHAC: And now that you
6 all are into four years of Voter ID.

7 TODD ROKITA: And nine elections.

8 REPRESENTATIVE BOHAC: What's the kind of
9 the sense of both the wrecks and Democrats? Where are
10 you all today? Are people very divided over it or is
11 there a sense that it's been relatively successful?

12 TODD ROKITA: You know, I think that
13 there's some diversions visions, but I look at Dallas
14 paper and I see a quote from Senator Erline Rogers.
15 She's from my home county, which includes Gary,
16 Indiana.

17 Now, she and I probably couldn't agree
18 politically on what color the sky is. I think she's a
19 wonderful woman and we get along personally fine.

20 Her quote is, for a county such as mine
21 and that is always occurred of Voter ID, no one can
22 make those charges anymore.

23 And I don't know if she realizes this or
24 not, but that was one of my points in the beginning.
25 It levels the playing field. It takes away the



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1 arguments that I think so many feel about being
2 disenfranchised.

3 Well, if everyone comes with the required
4 document, there is no real reason to deny them the
5 right to vote. So it actually increases the franchise
6 in that regard. No one can make up the politically
7 zealous excuse or even racist excuse to my people from
8 disenfranchised.

9 They have the document. Get out of their
10 way.

11 CHAIRMAN TODD SMITH: Well, I'll leave
12 this as just a comment: I can really never put my
13 hands on my Voter Registration Certificate.

14 TODD ROKITA: No one can.

15 CHAIRMAN TODD SMITH: So to me, voting
16 with an ID is actually more convenient because I
17 always have that with me. So --

18 TODD ROKITA: Indiana requires a photo,
19 and if nothing else but a photo and the other things I
20 listed here in this paper for you, Mr. Chairman, and
21 the members will do.

22 I think you're on a slippery slope to have
23 these non-photo, quote/unquote, exceptions.

24 CHAIRMAN TODD SMITH: Quick question: To
25 what extent are you familiar with the varying



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1 different studies that are out there on the effect of
2 your particular legislation on voter turn-out?

3 TODD ROKITA: To what extent am I
4 familiar? I think I'm familiar with all of them.

5 CHAIRMAN TODD SMITH: My understanding is
6 that there's one from the Brennan Center that says,
7 you know, they think they have determined that voter
8 turn-out was depressed by 2.9 percent.

9 Am I representing that correctly?
10 Something in that neighborhood?

11 TODD ROKITA: I'm not sure what they said.
12 I know they're on the very liberal side of the
13 spectrum engaged in this partially.

14 CHAIRMAN TODD SMITH: I understand.
15 And there's a Heritage Foundation study
16 which indicates no effect whatsoever, right? Is that
17 your understanding?

18 TODD ROKITA: Right. And there's the
19 University of Missouri study.

20 CHAIRMAN TODD SMITH: And there's from the
21 Political Science Magazine, University of Delaware,
22 two professors from the University of Delaware, one
23 professor from the University of Nebraska that has
24 just come out in January of this year, which findings
25 suggest that Voter ID laws have had no systematic



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1 effect on voter turn-out thus far.

2 Are you familiar with that report?

3 TODD ROKITA: I was familiar with the new
4 one.

5 CHAIRMAN TODD SMITH: Okay. You know.

6 And in looking at all these reports, you
7 know, forgive me if -- my a little skeptical, frankly,
8 about the allegations that there is any material
9 suppression of voters, but I am also a little
10 skeptical about the allegations of this single factor
11 is a result of the dramatic inspect creases in voting.

12 My reasoning of the evidence suggests to
13 me that there really isn't any reason to believe that
14 either of those is true in terms of evidence and in
15 terms of studies and in terms of the evidence that is
16 available to this committee.

17 Would you disagree with that assessment or
18 analysis?

19 TODD ROKITA: I would disagree with it
20 because of the things I said earlier. Just because
21 there aren't prosecutions, which is like folks like
22 the Brennan Center and others try to rely on, doesn't
23 mean that the fraud isn't there.

24 CHAIRMAN TODD SMITH: No. No.

25 What I'm getting at is the extent to which



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1 this legislation effects turn-out. That's the
2 question I'm focusing on.

3 TODD ROKITA: I think it increases
4 turn-out.

5 CHAIRMAN TODD SMITH: And that's based on
6 the fact that in Indiana, your turn-out went up rather
7 than down?

8 TODD ROKITA: Right.

9 CHAIRMAN TODD SMITH: You know, I could
10 argue that that's like saying, you know the rooster
11 crows, the sun comes up, therefore the rooster caused
12 the sun to come up.

13 You know, in other words, there are a lot
14 of variables you know, the weather, the number of hot
15 local races. Lots of variables that could explain,
16 you know, what turn-out. And unless you really looked
17 at it from an academic standpoint and isolated that
18 particular variable, you really don't have much
19 information in that regard.

20 And what I'm saying is: My sense of the
21 total of the totality of the studies is that both
22 sides are guilty of really speculating without any
23 substantiating evidence to suggest that this has any
24 meaningful impact on turn-out at all, one way or the
25 other.



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1 TODD ROKITA: I disagree.

2 CHAIRMAN TODD SMITH: Okay. What you
3 believe is that it actually enhances turn-out?

4 TODD ROKITA: Well, what I believe is that
5 one study out there did isolate all variables and
6 compare apples to apples.

7 CHAIRMAN TODD SMITH: And which one is
8 that?

9 TODD ROKITA: University of Missouri, the
10 Moylo, M-o-y-l-o, and the that's the one that found
11 voter turn-out in Indiana went up two percent that we
12 referenced earlier.

13 CHAIRMAN TODD SMITH: Okay. And so what
14 we've got, then is one study that says it went up two
15 percent. One study that said it went down two
16 percent. And a recent study by these gentlemen --

17 TODD ROKITA: I'm not as familiar with
18 that one.

19 CHAIRMAN TODD SMITH: That indicate that
20 it didn't go up at all.

21 But, again, tell me if I'm correct: My
22 understanding of the studies is that isn't the Brennan
23 society comparing a Lucy-goosy system, where you
24 literally show up at the polls, say, I'm Todd smith.

25 If you're on the voter registration list,



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1 they let you vote to the most progressive, as you
2 would put it version of photo identification
3 legislation in this comparison that's being made; is
4 that correct?

5 TODD ROKITA: When I say it's not apples
6 to apples, that is what I mean.

7 I spent now -- it's been a year or so
8 since I looked at the Brennan Center study.

9 CHAIRMAN TODD SMITH: I believe that's
10 what we would all agree is a progressive or liberal
11 think tank's conclusion is that you compare the least
12 burdensome system out there, that is vermont.

13 Where you walk in, say your name. And if
14 you're on the poll, they let you vote. You don't have
15 to produce any identification. To the most
16 progressive as you put it photo identification
17 requirement. And they concluded that there was a
18 2.9 percent reduction in turn-out.

19 What we're talking about here in the State
20 of Texas is the difference between a law which already
21 requires you to provide some sort of identification
22 and a law which simply authors the kind of
23 identification that you have to provide for a very
24 small segment of the community that does not at this
25 time, subject to free identification alternatives have



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1 a photo identification requirement.

2 You agree that there is not any evidence
3 or any study that would indicate in any way that that
4 sort of a change in the law would in any way adversely
5 affect any kind of voter turn-out, minority, poor,
6 elderly or otherwise?

7 TODD ROKITA: I don't know of one.

8 CHAIRMAN TODD SMITH: Okay. Thank you.

9 TODD ROKITA: Thank you.

10 REPRESENTATIVE ANCHIA: Mr. Chairman.

11 CHAIRMAN TODD SMITH: Yes. I'd like to
12 let --

13 REPRESENTATIVE ANCHIA: I'd just like to
14 ask one question. I'd just like a couple, if you
15 don't mind.

16 CHAIRMAN TODD SMITH: All right.

17 REPRESENTATIVE ANCHIA: I know, Todd,
18 there's been a characterization of the Brennan Center
19 as liberal and, I guess, the Brennan Center is NYU Law
20 School and is housed at the NYU Law School. Do you
21 know that for a fact?

22 TODD ROKITA: Do you know that for a fact?

23 REPRESENTATIVE ANCHIA: I believe it's the
24 Brennan Center --

25 TODD ROKITA: Then I believe you.



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1 REPRESENTATIVE ANCHIA: I'm not trying to
2 be flip. I'm really asking you: There's a
3 characterization by both the Chairman and by you that
4 this is a liberal think tank.

5 TODD ROKITA: So let me just say yes. I
6 do think it's liberal.

7 REPRESENTATIVE ANCHIA: Is it housed at
8 New York University Law School? Do you know that?

9 TODD ROKITA: I think it is but I'm not
10 sure.

11 REPRESENTATIVE ANCHIA: Are you elected or
12 appointed?

13 TODD ROKITA: Elected.

14 REPRESENTATIVE ANCHIA: In what party?

15 TODD ROKITA: Republican.

16 REPRESENTATIVE ANCHIA: And do you
17 consider yourself conservative or liberal?

18 TODD ROKITA: I consider myself
19 conservative.

20 REPRESENTATIVE ANCHIA: Okay. Since we're
21 placing labels, I thought I'd like the secretary
22 himself identified.

23 I want to ask you a little bit about some
24 real-life cases in Indiana where people may not have
25 been able to vote.



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1 You said you didn't know if the 34 folks
2 from Marion County were disenfranchised. You didn't
3 know one way or the other if they had been able to
4 vote a regular ballot.

5 Is there a threshold where we think it's
6 material if one American who's dually registered is
7 unable to vote? Is there a threshold? Is it five
8 when you believe it's material or a problem, that it's
9 not an issue? When does it become an issue? People
10 not being able to vote when they are otherwise dually
11 registered and eligible? When does it become an
12 issue?

13 TODD ROKITA: Well, I don't know if you
14 can put an exact number to it. I think the state --

15 REPRESENTATIVE ANCHIA: One, is that a bad
16 result if one is disenfranchised?

17 TODD ROKITA: Well, I think the state,
18 again, this is probably the third time I'm saying it,
19 as the Supreme Court indicated have a very real
20 interest in putting parameters on their elections.

21 REPRESENTATIVE ANCHIA: Right.

22 TODD ROKITA: So this state registers
23 voters. So if someone is otherwise eligible but just
24 didn't register, the state excludes them.

25 REPRESENTATIVE ANCHIA: That's right.



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1 TODD ROKITA: So if you're going to ask a
2 question like that. --

3 REPRESENTATIVE ANCHIA: If you're dually
4 registered --

5 TODD ROKITA: Then you must be arguing
6 that, you know, registration can disenfranchise some
7 folks, and, in fact, it does. If you can't register,
8 then you can't vote.

9 REPRESENTATIVE ANCHIA: Well, it makes it
10 harder to register.

11 TODD ROKITA: It's a kind of theory as the
12 Supreme Court has said, states can use to apply these
13 parameters to the process.

14 CHAIRMAN TODD SMITH: Let me just say,
15 members, that we've got several witnesses that are on
16 early flights and we're not going to be able to hear
17 from them unless we move this along.

18 And I'm getting from both sides to go
19 beyond the allotted time. And if we do that.

20 REPRESENTATIVE ANCHIA: This is such a
21 unique opportunity, though, Mr. Chairman.

22 CHAIRMAN TODD SMITH: We're going to hear
23 from fewer people.

24 Representative Brown says she has one
25 question. I'm going to let her ask it.



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1 REPRESENTATIVE ANCHIA: Can I finish my
2 last question, Mr. Chairman? I just have one more
3 question.

4 CHAIRMAN TODD SMITH: Okay. Be quick.

5 REPRESENTATIVE ANCHIA: There were 12 nuns
6 at the St. Mary's convent in Southbend who were
7 eligible to vote but were turned away because they had
8 expired photo ID in many cases. They brought their
9 passports.

10 TODD ROKITA: Passports from the 1950s.

11 REPRESENTATIVE ANCHIA: Okay. They were
12 expired. But otherwise it was their passport. That's
13 not controverted, right?

14 TODD ROKITA: I don't know if it was. I'm
15 sure it was.

16 REPRESENTATIVE ANCHIA: It doesn't seem
17 like it's controverted in the record. Is that a bad
18 result? Is that say bad public policy?

19 TODD ROKITA: No. That was the right
20 result.

21 And I can say this, and I know you're
22 Roman Catholic. I know that Raphael. I went to eight
23 years' of Catholic School. And if there's one rule
24 that I was taught, even at the risk of getting a ruler
25 thrown down on me is that you follow the law. That



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1 the law applies to everyone, whether you're a nun or
2 not.

3 Those nuns weren't disenfranchised. They
4 just didn't want to follow the law.

5 REPRESENTATIVE ANCHIA: And you think that
6 produced a good result?

7 TODD ROKITA: Absolutely.

8 REPRESENTATIVE ANCHIA: Okay. Thank you,
9 Mr. Secretary.

10 CHAIRMAN TODD SMITH: Representative
11 Brown.

12 REPRESENTATIVE BROWN: There is one.

13 CHAIRMAN TODD SMITH: One question. Make
14 it a good one.

15 REPRESENTATIVE BROWN: All right. There's
16 one thing that I think has been neglected today, and I
17 wish you would close with just addressing the fact
18 that the Indiana bill did go before the Supreme Court
19 and was upheld at that point.

20 Can you just give a quick statement about
21 that and the finding.

22 TODD ROKITA: Absolutely. The Supreme
23 Court said this was a long overdue reform and that the
24 states had an interest in putting guardrails and
25 parameters around the process of their election so



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1 that they can could have a result that is fair,
2 accurate and that people could believe in.

3 REPRESENTATIVE BROWN: And that was about
4 what numbers on that decision?

5 TODD ROKITA: 6 to 3.

6 REPRESENTATIVE BROWN: That's right. 6 to
7 3.

8 Thank you so much.

9 TODD ROKITA: Thank you. It's a pleasure
10 to be here.

11 CHAIRMAN TODD SMITH: Thank you,
12 Secretary. We do very much appreciate the you taking
13 the time to come down and subject yourself to this.

14 TODD ROKITA: It's my honor. Thank you.

15 REPRESENTATIVE VEASEY: Mr. Chairman, I
16 did want to make one statement. I didn't have any
17 questions but I wanted to clarify.

18 You had said that the Carter-Baker
19 Commission was in favor of Voter ID. They wanted to
20 make a clarification on some of the comments that
21 would be misconstrued after the report was released.

22 And so they wrote an editorial saying,
23 quote, until we have universal registration, we cannot
24 make having such an ID a condition of voting.

25 So I did want to make sure that that was



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1 clarified for everybody in the audience and the
2 members of the committee.

3 REPRESENTATIVE BROWN: And that came from
4 who?

5 CHAIRMAN TODD SMITH: It came from Jimmy
6 Carter and James Baker.

7 TODD ROKITA: Jimmie Carter and Secretary
8 Baker.

9 CHAIRMAN TODD SMITH: It's an editorial
10 and it illustrates what's in the report, which is that
11 they believe it's important to expand access and
12 security at the same time. They believing both are
13 important. That's the conclusion and I agree with
14 them. I think everybody on the committee does.

15 The next witness is Diane Trautman, who is
16 a professor of education and is going to testify
17 against Senate Bill 362. She's from Harris County.

18 Please identify yourself, your name and
19 who you Representative on represent on the record.

20 MS. TRAUTMAN: Good afternoon. And thank
21 you for allowing me to testify today.

22 My name is Diane Trautman. I live in
23 Humble, Harris County, Texas, where my husband and I
24 have raised three children.

25 After working in the banking industry I



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1 changed careers to teach at the middle and high school
2 level, became a principal and then a college
3 professor. Teaching classes in leadership and ethics.

4 As my fellow Harris County Representative
5 Allen and Representative Bohac know, I was the
6 democratic nominee for Harris County, Texas Tax
7 Assessor in 2008.

8 As a candidate I did my best to learn as
9 much as possible about the election-related
10 responsibilities involved in being a voter registrar.
11 And although I didn't quite get 50 percent of the
12 vote, my interests in free and fair elections is the
13 reason I'm here today. Not campaign politics or
14 partisanship.

15 Elections must be free from fraud and
16 intimidation. As we encourage full participation by
17 every citizen who is eligible to vote, that should not
18 be a Democratic or a Republican value.

19 Having taught ethics and leadership
20 classes to young people, I abhor the cynicism bred by
21 fraud and cheating. But I am concerned that a
22 proposed Voter ID legislation went do a thing to stop
23 fraud and it could make it harder for many Texans to
24 vote.

25 The question: We have problems in our



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1 election system that need to be addressed. After
2 butterfly, hanging chads, vote caging and the lack of
3 a verifiable paper trail for electronic machines, many
4 have lost confidence in our system.

5 But no one has lost confidence because of
6 voter impersonation. The only kind of alleged fraud
7 that would be addressed by a photo ID requirement.
8 Because it is so rare that it hardly exists.

9 To my knowledge, there has not been a
10 single case of voter impersonation that exists in
11 Harris County. And claims made by our tax assessors
12 office that numerous dead people and non citizens have
13 actually voted in Harris County, have proven when
14 scrutinized to be greatly exaggerated, due to donor
15 matching problems and clerical error.

16 For example, last year this committee was
17 told under oath by former Tax Assessor Collector Paul
18 Betencort that in Harris County there were 381 iron
19 clad cases of Voter ID, 315 non-citizens trying to
20 commit Voter ID, and 22 non-citizens who had voted.

21 However, there has only been one attempt
22 at voter fraud prosecution in Harris County in the
23 last eight years. And this committee's interim report
24 found that of the 22 non-citizens who had allegedly
25 voted, one person could be confirmed as having voted



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1 but, and this is important, only after he was issued a
2 registration card by the county even though he did not
3 check he was a citizen on his application.

4 Another woman voted once before she became
5 a citizen. Many of the others were, in fact,
6 citizens.

7 As a taxpayer I am concerned that our Tax
8 Assessor's Office had been coming to Austin for years
9 on the taxpayers' dime, testifying as experts with
10 inflated claims as aggressive advocates with this
11 Voter ID agenda, when they couldn't even do their own
12 job back home.

13 With all due respect, if this committee is
14 really concerned about the integrity of elections,
15 please quit trying to solve a phantom voter
16 impersonation problem and do something about the
17 thousands of eligible voters whose names weren't on
18 the voter rolls in Harris County when voting began
19 last year.

20 Those are real numbers, of real people
21 being denied the right to vote. Unfortunately, these
22 problems will be even worse if a Voter ID bill becomes
23 law.

24 On October 20, 2008, the first day of
25 early voting, the Houston Chronicle reported that more



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1 than 13,000 Voter Registration applications in Harris
2 County had not yet been processed, which meant these
3 newly registered voters were not on the voter list at
4 the counties 36 early voting locations.

5 No other major Texas County had that
6 problem. These Voter Registration problems relate
7 directly to the proposed Voter ID bill because these
8 more restrictive requirements will lead to more
9 provisional ballots being cast by voters who do not
10 present required ID.

11 The county of provisional ballots was also
12 a huge black eye for Harris County and it wasn't a
13 partisan issue.

14 A lifelong Republican chaired the ballot
15 board, and he said the counting of provisional ballots
16 was delayed by slow, faulty work by the Tax Assessor's
17 Office, who delivered the bulk of the ballots, some of
18 which appeared altered on the final day of the seven
19 days the board had to do its work.

20 If the integrity of elections is what we
21 are really discussing today, please consider what just
22 happened in our state's largest county before you pass
23 a law that would place more bureaucratic barriers
24 between Texans and the ballot box and how that law
25 would impact a ballot for bureaucracy that isn't even



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1 working today.

2 Instead of enacting are restrictive
3 measures that keep people from voting, let's keep our
4 election system up to 21st century standards to make
5 voting both easier and more secure.

6 Taxpayers have a right to expect, at
7 least, that much from our government.

8 CHAIRMAN TODD SMITH: All right. Thank
9 you very much.

10 MS. TRAUTMAN: Thank you.

11 CHAIRMAN TODD SMITH: You talk about the
12 fact that -- you agree that voter fraud is a problem.

13 MS. TRAUTMAN: I think that it is a
14 serious issue, and I think it should be prosecuted to
15 the full extent of the law, if we could just find some
16 evidence where it happens.

17 CHAIRMAN TODD SMITH: No. I think your
18 position is that voter fraud occurs more with
19 absentee-ballots than it does impersonation.

20 But is it your position that voter fraud
21 is not even a problem in our state?

22 MS. TRAUTMAN: I don't think there's any
23 evidence for it.

24 CHAIRMAN TODD SMITH: You don't think
25 there's any evidence of voter fraud in our state of



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1 any kind?

2 MS. TRAUTMAN: No, I don't. The record
3 does not show that.

4 CHAIRMAN TODD SMITH: You don't think that
5 there's evidence that even voter fraud is on
6 absentee-ballots?

7 MS. TRAUTMAN: I'm not aware of any have.

8 CHAIRMAN TODD SMITH: I thought earlier in
9 your testimony you had indicated that, in fact, that's
10 where you thought the voter fraud was --

11 MS. TRAUTMAN: No.

12 CHAIRMAN TODD SMITH: With regard to
13 absentee-ballots --

14 MS. TRAUTMAN: No. Not at all.

15 CHAIRMAN TODD SMITH: Okay. So your
16 testimony is you don't think we have a voter fraud
17 problem either with regard to absentee-ballots or with
18 regard to impersonation?

19 MS. TRAUTMAN: No. I don't see any
20 evidence in the record.

21 CHAIRMAN TODD SMITH: Okay. I
22 misunderstood your earlier testimony.

23 Do you think it's easy to prosecute voter
24 fraud?

25 MS. TRAUTMAN: Well, there haven't been



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1 any prosecutions so we wouldn't know.

2 CHAIRMAN TODD SMITH: Okay. So you don't
3 have any opinion on whether or not it is easy to
4 identify and prosecute that particular crime?

5 MS. TRAUTMAN: I think we have to have
6 evidence first.

7 CHAIRMAN TODD SMITH: Okay. I just want
8 to quickly run through some stuff since you don't
9 think there's any evidence of voter fraud at all.

10 We have an indication, and again, some of
11 this is impersonation, some of it is not.

12 Progresso case -- I believe, that's in the
13 Vice-Chairman's district, where there is an Affidavit
14 from an undocumented worker indicating that someone
15 had given him the Voter Registration card and asked
16 him to vote in their place.

17 We have an AG investigation, which
18 Representative Anchia may correctly indicate that did
19 not identify any particular in-person fraud, but which
20 did identify a man who voted twice in Starr County. A
21 woman who voted for a dead mother. A Council Member
22 in Port Lavaca who registered non-citizens.

23 We have indication that in Houston in
24 March of '08 primary, a dead woman voted in person
25 near her home. We have an Attorney General brief



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1 where there was prior testimony of witnesses in Texas
2 about voter fraud.

3 We have in Harris County, one occurred in
4 your county, who registered hundreds of voters,
5 changed their addresses and then voted for them on
6 election day.

7 We have stolen registration cards. A cry
8 that only makes sense if one is intending to
9 impersonate voters allegedly by those who brought that
10 up.

11 REPRESENTATIVE ANCHIA: We have testimony
12 to all that that you're quoting now?

13 CHAIRMAN TODD SMITH: This is from the
14 documentation that I reviewed prior to the hearing.
15 I'm giving her the chance to respond to that to any
16 extent that she's familiar with it.

17 REPRESENTATIVE ANCHIA: I just want to
18 make sure that you're not stating that the cases out
19 of Progresso are confirmed in any way.

20 CHAIRMAN TODD SMITH: I stated what I
21 found in the documentation that I reviewed prior to
22 the testimony today in giving all the witnesses an
23 opportunity to testify on it that an individual has
24 signed an Affidavit stating that he is an undocumented
25 work they're was asked, handed a Voter Registration



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1 card and was asked to vote for someone at the polls.

2 REPRESENTATIVE ANCHIA: And you'll
3 stipulate that that's still under investigation?

4 CHAIRMAN TODD SMITH: There's not been a
5 trial.

6 REPRESENTATIVE ANCHIA: Nor has there been
7 an indictment to my knowledge.

8 CHAIRMAN TODD SMITH: You know I'm
9 representing what I have read in the press stories
10 from that area, representing the state of the
11 evidence. And I'm not done yet.

12 Michael Zorr -- all the things I'm
13 mentioning until I state otherwise, are from the
14 Attorney General brief.

15 Michael Zorr voted two times in 2006 in
16 two different locations.

17 James Scherr, an attorney.

18 DIANE TRAUTMAN: Who is that?

19 CHAIRMAN TODD SMITH: That one, I believe,
20 was in a different state.

21 DIANE TRAUTMAN: Okay.

22 REPRESENTATIVE BROWN: She's from Harris
23 County.

24 CHAIRMAN TODD SMITH: I understand.

25 James Scherr, an attorney casts two



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1 ballots several times in 2000, and 2002. One of the
2 potential dozens of double voting cases that occurred
3 in Kansas City.

4 Andre Elizme, died in 1997 and voted in
5 2000.

6 The Atlanta newspapers said between 1980
7 and 2000, more than 5,000 people voted after their
8 deaths.

9 In the valley in Texas, a voter
10 registration card was issued to imaginary voters and
11 given to real people. Those are the evidence that's
12 presented in the Attorney General's report.

13 The Baker-Carter Commission talks about
14 the November of 2004, the Washington Governor's Race,
15 ex-felons and the dead voted.

16 They talk about it in Milwaukee, there
17 were, this is the Carter-Baker Commission, 200 felons.

18 REPRESENTATIVE HEFLIN: Mr. Chairman, I'd
19 like to respectfully interrupt again: Is this lady --
20 does she have knowledge of all this?

21 DIANE TRAUTMAN: I do not.

22 REPRESENTATIVE HEFLIN: Is she testifying
23 to all this?

24 DIANE TRAUTMAN: I do not.

25 REPRESENTATIVE HEFLIN: Is there a witness



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1 that could answer these questions?

2 CHAIRMAN TODD SMITH: I hope so. If I
3 laid this stuff out there, hopefully they will have
4 the opportunity, to extent that they're familiar with
5 any of these cases, to do so, as the testimony
6 progresses.

7 REPRESENTATIVE HEFLIN: So I have to ask:
8 Are you testifying on your time or are you taking up
9 her time?

10 CHAIRMAN TODD SMITH: Well, I'm trying to
11 give all these witnesses an opportunity to respond to
12 these questions.

13 REPRESENTATIVE HEFLIN: I would ask that
14 her time be --

15 CHAIRMAN TODD SMITH: There has been
16 testimony from this witness that there is no voter
17 fraud.

18 REPRESENTATIVE HEFLIN: In her knowledge.
19 Her knowledge of Harris County.

20 CHAIRMAN TODD SMITH: All right. Well I'm
21 siting from the Carter-Baker Commission.

22 IN Milwaukee, 200 felons. 100 voted two
23 times. Others used fake name or address or voted in
24 the name of the dead.

25 4,500 more votes were casts than voters



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1 listed.

2 The Carter-Baker Commission listed that
3 there's no evidence of extensive fraud in U.S.
4 elections or of multiple voting, but both occur and it
5 could affect the outcome of a close election.

6 While this is a quote, while the
7 commission is divided on the magnitude of the voter
8 fraud, with some believing it is widespread and others
9 believing it is minor, there is no doubt that it
10 occurs.

11 In closer disputed elections and there are
12 many, a small amount of fraud could make the margin of
13 difference.

14 I've got another page of information from
15 the January of '09 Elections Committee Interim Report
16 identifying a number of instances.

17 DIANE TRAUTMAN: Mr. Chairman, I ask:
18 Have any of these been prosecuted?

19 CHAIRMAN TODD SMITH: Well, there's, you
20 know --

21 DIANE TRAUTMAN: Because that's what I
22 would call voter fraud, if it's been prosecuted.

23 CHAIRMAN TODD SMITH: Okay. So if it
24 hasn't been prosecuted, then in your mind it didn't
25 occur?



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1 DIANE TRAUTMAN: Obviously there is no
2 evidence or there's not enough evidence.

3 CHAIRMAN TODD SMITH: Okay. Members.
4 Representative Heflin.

5 REPRESENTATIVE HEFLIN: In Harris County,
6 are you aware of any cases that have been prosecuted
7 for voter impersonation?

8 DIANE TRAUTMAN: No, sir, I'm not.

9 REPRESENTATIVE HEFLIN: Okay. And that's
10 where you have knowledge of; is that correct?

11 DIANE TRAUTMAN: That's correct.

12 REPRESENTATIVE HEFLIN: Now, you're here
13 today testifying -- tell me again your background.

14 DIANE TRAUTMAN: Professor of education.

15 REPRESENTATIVE HEFLIN: Okay.

16 DIANE TRAUTMAN: And former candidate for
17 Harris County Tax Assessor.

18 REPRESENTATIVE HEFLIN: Okay. So you ran
19 for office? You watched the process? You're familiar
20 with the voting process in Texas?

21 DIANE TRAUTMAN: Yes, sir, we researched
22 quite a bit with the Harris County Tax Assessor. We
23 also researched the registrar.

24 REPRESENTATIVE HEFLIN: Now, I think in
25 your testimony you said there was one attempt to



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1 prosecute and that was out of 15 non-citizens that
2 actually voted?

3 DIANE TRAUTMAN: Right.

4 REPRESENTATIVE HEFLIN: And those 15
5 non-citizens were actually issued a Voter Registration
6 card. Did I understand that correctly?

7 DIANE TRAUTMAN: That's correct.

8 REPRESENTATIVE HEFLIN: Okay. But there's
9 only -- and do you know the status of that
10 prosecution?

11 DIANE TRAUTMAN: It was dropped.

12 REPRESENTATIVE HEFLIN: Okay. So as to
13 the issue of voter impersonation, whether it's right
14 or wrong or whether that's what we need to fix today,
15 I would ask you: Do you believe that in Texas, that
16 we have a big issue with voter impersonation?

17 DIANE TRAUTMAN: I do not. I do, however,
18 believe we have more pressing problems with priorities
19 that we're facing that photo ID takes the time of --

20 REPRESENTATIVE HEFLIN: Now, would you
21 believe that one of the priorities might be more
22 training for election workers?

23 DIANE TRAUTMAN: Well, actually, I was
24 thinking about public school funding, actually was one
25 of the bigger priorities. But yes, we do a lot, a lot



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1 more training.

2 REPRESENTATIVE HEFLIN: Okay.

3 DIANE TRAUTMAN: Actually, of the things
4 that were uncovered in the inconsistent practices that
5 were found by a non-partisan expert, according to
6 sworn depositions of employees who worked in the Tax
7 Assessor's Office, which have been provided to, at
8 least, one legislator upon request.

9 No. One, there was a concerted effort to
10 downsize the registration office, starting in 2006,
11 and the number of employees dropped from 40 to 13 as
12 people who transferred out were not replaced.

13 Workers were just thrown in when they
14 started without adequate training, instructions or a
15 manual.

16 The remaining workers are requested more
17 staff, but none were added until temporary workers
18 were brought in near the deadline from private enter
19 its not affiliated with the county.

20 The Tax Assessor himself told KHOUTV that
21 an 18-year old who was denied to vote at the polls on
22 this juror, her application was rejected due to a
23 quote, mistake by a temporary employee, unquote.

24 So yes, I do think more training.

25 REPRESENTATIVE HEFLIN: Now, do you know



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1 or have knowledge of how many provisional ballots were
2 cast in Harris County?

3 DIANE TRAUTMAN: I believe it was 11,000.

4 REPRESENTATIVE HEFLIN: 11,000. And do
5 you know the ultimate treatment -- do you know or do
6 you have knowledge of how those ballots were
7 ultimately treated?

8 DIANE TRAUTMAN: One of the problems, I
9 think, is the connection.

10 And as I said earlier, problems with Voter
11 Registration relate directly to the proposed Voter ID
12 bill because these new requirements will lead to more
13 provision ballots being cast by voters who do not
14 present required ID.

15 In 2008 the counting of provisional
16 ballots was a big problem according to lifelong
17 Republican, Jim Harding, a retired business executive
18 who chaired the ballot board and who told the Houston
19 Chronicle on November 12th that the counting of
20 provisional ballots was delayed by faulty work by Tax
21 Assessor Betencort's staff.

22 The Ballot Board convened after the
23 election in there are 2,000 provisional ballots that
24 need to be checked before each is being counted but
25 the board can only accept or reject the ballot after



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1 the voter Registrar's Office sends over
2 recommendations.

3 The board had only seven days to rule on
4 whether a vote counts or not, but Harding said the
5 process was made even more difficult because he didn't
6 get the bulk of the ballots from Betencort's office
7 until the final day.

8 On hundreds of voter forms information has
9 been mapped by the Registrar's Office with white
10 correction fluid and then altered with new
11 information.

12 As Ballot Board members determine whether
13 ballots should be counted, Harding said they wanted to
14 have confidence in the accuracy of the Registrar's
15 research. But quote, that kind of confidence is not
16 replicated here.

17 And then when they see this white out all
18 over the place, they get nervous, meaning his workers,
19 unquote. He said.

20 REPRESENTATIVE HEFLIN: Okay. Let me
21 interrupt you real quick.

22 DIANE TRAUTMAN: Okay. Sure.

23 REPRESENTATIVE HEFLIN: Because we're
24 trying to move on here today.

25 As to -- and I don't like the issue, I



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1 don't like the name of a Voter ID bill. I think we
2 ought to be doing a voter enhancement bill, if
3 anything.

4 Do you believe that if we had treatment,
5 better treatment of provisional ballots, whereas
6 someone gets to a poll at 5:07, they don't have their
7 ID, they can come back the next day or so and appear,
8 like they do in Indiana?

9 Do you believe that that's a realistic
10 step in this understanding? This is a tall stair
11 we're going up one step in the process of enhancing
12 voters?

13 DIANE TRAUTMAN: Honestly, if we can take
14 that much time to address it, then it must not be
15 something that is in dire straits that we take care
16 of.

17 So I think, again, you know, we're chasing
18 a solution in search of a problem.

19 REPRESENTATIVE HEFLIN: Oftentimes here in
20 Austin, we fix many things that are not broken.

21 But if we're going to try to fix this
22 thing that's apparently not broken, would you agree,
23 and you ran for office, that treatment of provisional
24 ballots, whereas to make sure we don't lose 11,000
25 voters, would be a logical step in our process?



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1 DIANE TRAUTMAN: We want to protect the
2 voters, but a Voter ID bill, the way that I see it,
3 would cause more provisional votes.

4 REPRESENTATIVE HEFLIN: Okay.

5 DIANE TRAUTMAN: Thereby adding to the
6 problem of the burdening an already overburdened and
7 under trained Tax Office.

8 REPRESENTATIVE HEFLIN: And as with all
9 due respect to Mr. Chairman: Those issues that he
10 went on and on about, honestly.

11 CHAIRMAN TODD SMITH: Seven minutes.

12 REPRESENTATIVE HEFLIN: Seven minutes, you
13 have no personal knowledge to those, do you?

14 DIANE TRAUTMAN: I do not.

15 REPRESENTATIVE HEFLIN: Okay. Thank you
16 very much. Thanks for coming down.

17 CHAIRMAN TODD SMITH: Raise your hand,
18 members.

19 Representative Brown.

20 REPRESENTATIVE BROWN: Ms. Trautman, you
21 referred to those ballots being received so late in
22 offices or the registration -- voter registration
23 applications being received too late.

24 How long a period of time does it take?
25 Do the authorities have after receiving those to get



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1 them to make them effective?

2 DIANE TRAUTMAN: Seven days. Seven days
3 is the usual time.

4 REPRESENTATIVE BROWN: I beg your pardon?

5 DIANE TRAUTMAN: Seven days.

6 REPRESENTATIVE BROWN: You send in a Voter
7 Registration Application and they have to have it
8 effective in seven days?

9 DIANE TRAUTMAN: They have to notify you
10 -- well, at that point, I'm not sure I understand your
11 question.

12 Are you talking about the people who had
13 already sent them in and they were waiting and they
14 got turned away at the polls?

15 REPRESENTATIVE BROWN: Yes. People who
16 had sent in a Voter Registration Application. And
17 you're saying they have to have seven days to turn
18 that around?

19 DIANE TRAUTMAN: Well, yes, they have to
20 let them know in seven days, exactly. After that
21 time, when they were turned away at the polls and they
22 had them -- many of them had sent them in, as many as
23 40 days earlier.

24 REPRESENTATIVE BROWN: Okay. It's my
25 understanding the office has 30 days to make that



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1 application effective for them to be able to vote.

2 DIANE TRAUTMAN: Okay.

3 REPRESENTATIVE BROWN: 30 days.

4 DIANE TRAUTMAN: I may be wrong on that.

5 REPRESENTATIVE BROWN: I think everyone
6 here would have to agree with me.

7 DIANE TRAUTMAN: But there's a seven-day
8 notification I know that they have to do.

9 REPRESENTATIVE BROWN: Any would be after
10 -- I don't know, something else happened. But when
11 you sent in an application for a Voter Registration
12 card --

13 DIANE TRAUTMAN: That is correct. But I'm
14 talking -- this is a different situation.

15 These people had been waiting months, and
16 assumed they were ready to vote, they thought they
17 were on the road.

18 REPRESENTATIVE BROWN: Okay.

19 DIANE TRAUTMAN: And they went there and
20 they were not: They were rejected.

21 REPRESENTATIVE BROWN: Have you ever
22 worked an election?

23 DIANE TRAUTMAN: Yes.

24 REPRESENTATIVE BROWN: So you are familiar
25 with the process.



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1 How many elections did you work?

2 DIANE TRAUTMAN: I worked as a clerk a
3 couple of times before I ran for office.

4 REPRESENTATIVE BROWN: And you're
5 testifying as an authority on the issue?

6 DIANE TRAUTMAN: No. I'm testifying as a
7 citizen, a private citizen very concerned about
8 keeping our elections free and making sure that
9 everyone's right to vote is protected.

10 REPRESENTATIVE BROWN: I agree with that.
11 That's a worthy goal. We're all here to do that.

12 CHAIRMAN TODD SMITH: Anybody else on the
13 committee who wishes to ask this witness a question
14 before I let one of our non-committee members ask a
15 question?

16 Take your chance now if you have any
17 questions.

18 Represent Allen. Dr. Allen.

19 REPRESENTATIVE ALLEN: I just wanted to
20 say to Ms. Trautman, thank you for coming today and
21 thank you for all the services you've rendered to our
22 community.

23 And if we were not doing a Voter ID bill,
24 and I know that you would know after you did all of
25 your research for running for your position, what



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1 would you recommend we be doing rather than doing a
2 Voter ID bill today? What would be a better use of
3 our time and resources?

4 DIANE TRAUTMAN: I definitely think we
5 need to be addressing public school funding.

6 In my district, my home district, Humble
7 ISD we have seen teacher layoffs. We have seen
8 schools unable to open, that have been built because
9 we can't afford it.

10 We must have a school funding formula that
11 fairly addresses the adequate and equality of school
12 funding statewide. I think there's no higher or more
13 important calling right now.

14 REPRESENTATIVE ALLEN: Thank you.

15 CHAIRMAN TODD SMITH: Does everybody on
16 the committee have what they need?

17 Representative Gutierrez.

18 REPRESENTATIVE GUTIERREZ: Thank you,
19 Mr. Chair. I'll make this brief and I promise I'll
20 leave after this.

21 CHAIRMAN TODD SMITH: You don't have to do
22 that. You can stay with us all night long if you want
23 to.

24 REPRESENTATIVE GUTIERREZ: This is an
25 important issue to folks in my district back home.



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1 And I wanted to ask Mr. Rokita some
2 questions but unfortunately was unable to.

3 So I'll ask Ms. Trautman some questions.

4 Ms. Trautman, what you do is obviously
5 very important, correct? And the chairman brought up
6 certain issues that you weren't familiar.

7 Were you familiar with any of the
8 investigations in Texas, at all?

9 DIANE TRAUTMAN: The investigations, as
10 far as --

11 REPRESENTATIVE GUTIERREZ: Different
12 district attorneys also investigated this issue in
13 their own counties. Are you familiar with any of them
14 at all?

15 DIANE TRAUTMAN: Again, unless it was
16 prosecuted, no.

17 REPRESENTATIVE GUTIERREZ: Well, for
18 instance in Bexar County, our Republican District
19 Attorney, Susan Reed, investigated this issue at
20 length, and only found two instances of legal citizens
21 going to jury duty and saying they were illegal
22 immigrants.

23 So indeed, she had found no voter fraud of
24 any kind or Voter ID issues in Bear County.

25 So with that in mind, Mr. Chairman, I just



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1 want to reiterate some of the things that have been
2 said and insure that when we have witnesses come up
3 and I thank you for your time in what you said.

4 Because, indeed, this is what you call it
5 -- we don't want to find solutions to problems that
6 don't exist and you said it a lot better than that.

7 I think that when we do have witnesses
8 like the previous witnesses, like the previous witness
9 we need to limit ourself to evidentiary issues and not
10 anecdotal data that cannot be supported.

11 So with that in mind, Mr. Chairman, I'll
12 do as I said and promise to just sit back and listen.

13 This is an important issue to me because
14 my parents were immigrants to this country and they
15 worked very hard to get here and they earned their
16 right to vote.

17 So I did want to spend a little bit of
18 time with you today and ask you to be considerate of
19 the evidence that's presented and not anecdotal
20 information or folks that want to rely on certain
21 studies but not others.

22 CHAIRMAN TODD SMITH: And let me just say
23 for the record that in the last few weeks I've been
24 reading a little bit of this stuff.

25 And on one side of the issue, the argument



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1 is that fraud occurs primarily with absentee-ballots
2 and there's not a lot of evidence of in-person fraud.

3 And on the other side of the argument is
4 the argument that while there's not a lot of proof of
5 in-person fraud, that it may be the tip of the iceberg
6 and therefore, there is reason to enhance the security
7 of our elections. That's the debate that's been
8 occurring.

9 It's the first time I've heard a witness
10 actually take the position that they don't believe
11 there is a lot of voter fraud that occurs even with
12 regard to absentee-ballots.

13 And let me just say that when we have
14 proof, it's not a matter of opinion, it's a fact, that
15 we have many instances that have been demonstrated of
16 inside the state and outside the state of people
17 voting after they've died, and in almost every
18 instance, they are not prosecuted because nobody knows
19 who cast that dead persons vote.

20 The only thing we know for sure is that it
21 wasn't the dead person. And so I think that that is
22 an example of how you can know there is voter fraud
23 and know at the same time that it was not prosecuted
24 because you can't do it.

25 And so that's not an opinion I'm



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1 expressing. That's a fact.

2 And I am here today to hear from both
3 sides of the argument on issues that are a matter of
4 legitimate discussion about people's opinions. But
5 when the testimony goes outside the bounds of what we
6 know, then I'm probably going to ask an asserted
7 question or two.

8 All right. Thank you. Thank you very
9 much for taking time to be with us today.

10 DIANE TRAUTMAN: Certainly.

11 CHAIRMAN TODD SMITH: We appreciate it.

12 At this time the chair calls John Fund,
13 who is representing himself and is the author of a
14 book relating to voter fraud, and I'll let you sell
15 your book if you want to.

16 JOHN FUND: Free copies are available to
17 anyone on the committee's who wants one.

18 CHAIRMAN TODD SMITH: Your name and just
19 to make it clear on the record: You're testifying in
20 favor of Senate Bill 362.

21 JOHN FUND: I'm testifying on the notion
22 of the need for more voter integrity, which includes
23 photo ID or other voter identification requirement.

24 CHAIRMAN TODD SMITH: Your name and who
25 you Representative.



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1 JOHN FUND: John Fund. I'm the author of
2 "Stealing Elections How Voter Fraud Threatens Our
3 Democracy."

4 CHAIRMAN TODD SMITH: All right.

5 JOHN FUND: I want to apologize, first,
6 because I have a flight to catch and I'm not trying to
7 be rude or in any way cut short your questions, nor am
8 I shirking them. But I will have to leave. And I
9 apologize in advance for doing so.

10 I would be happy to answer questions in
11 writing. I would be happy to communicate by telephone
12 with any of the committee members, should they have
13 questions.

14 So I apologize in advance for making my
15 remarks somewhat brief and they will be somewhat
16 truncated.

17 CHAIRMAN TODD SMITH: Tell us what we need
18 to know.

19 JOHN FUND: Well, I think one of the
20 things that Secretary Rokita mentioned is very
21 important, which is we now have a four-year experience
22 with Indiana law in Indiana and some minds have been
23 changed.

24 I have reported from Indiana. I have been
25 one of the people who investigated the Chicago voter



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1 fraud case, which is one of the more infamous voter
2 fraud cases in which an election was thrown out. And
3 we've now had four years of experience.

4 I think the Dallas Morning News article
5 today is very significant because it quotes State
6 Senator Erline Rogers of Gary, Indiana, who says that
7 the Voter ID law in Indiana has not hurt people's
8 ability to vote.

9 In fact, she said that it's helped areas
10 such as her region located close enough to Chicago to
11 carry a stigma to include the reputation.

12 And the quote that Secretary Rokita gave
13 you is for a county such as mine, it is always accused
14 that voter fraud. No one can make those charges
15 anymore. It has helped our image.

16 So I understand that there are people who
17 still view the Indiana law as controversial but there
18 are people who opposed it when they voted on the issue
19 in the legislature in 2005 who have changed their
20 mind. And I think that's significant.

21 In addition I would note that there are
22 also people who were very active in the civil rights
23 movement in the 1960s, who do not believe this is a
24 very controversial issue.

25 I have interviewed Andrew Young who's a



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1 former Mayor of Atlanta and the former UN Ambassador
2 and who was one of the confidants of Martin Luther
3 King.

4 And he believes that yes, it is important
5 that people do not have photo ID or other
6 identification. That's why we should go help them get
7 it.

8 How can you elevate yourself from poverty
9 to the middle class if you don't have ID? We should
10 use this opportunity to include our election integrity
11 to create, to actually get I.D., create integrity to
12 actually get photo ID in the hands of more people.

13 You cannot rent a video. You cannot enter
14 a federal building. You cannot attend a court
15 hearing. You cannot cash a check. You cannot travel
16 on an airplane.

17 You cannot even board an Amtrak train
18 because they have spot checks of ID. You cannot do an
19 awful lot of things in American life without an ID. I
20 don't think that the percentage of people who lack
21 identification is five percent. I think it's far
22 fewer.

23 But for those who do lack identification,
24 whether they're a senior citizen in a nursing home,
25 whether they're some who's elderly and has never had



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1 identification.

2 Whether they're a poor person in an urban
3 ghetto, we should get them ID. That's why Andrew
4 Young supports it. He views it as a positive effort
5 to not only improve election integrity, but to also
6 mainstream people into American society.

7 Now, a point has been made about the fact
8 that there's very little evidence that voter fraud or
9 of the impersonation level exists.

10 Well, yes and no. If you practice voter
11 impersonation fraud or you create fictitious people
12 and vote on their stead or you vote on behalf of dead
13 people, you can get away with it for an awful long
14 time.

15 Democratic Congresswoman Elizabeth
16 Holestein, was very active in the voter investigation
17 of Richard Nixon ordered the District Attorney in
18 Brooklyn.

19 In 1989 her Grand Jury issued a long
20 report on the voter fraud conspiracy involving fraud
21 at the polls, which has operated successfully for
22 14 years. That fraud resulted in thousands of votes
23 being cast fraudulently in state Congressional
24 elections, and involved impersonating voters at polls,
25 voting under fictitious names that have been



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1 successfully registered without, and there's other
2 methods.

3 This fraud could have easily been stopped
4 or detected if it required voters' identity at the
5 poles.

6 According to the grand jury investigation,
7 the advent of mail-in ballot, mail-in registration was
8 also a key factor in the voter fraud.

9 I interviewed people who are active in
10 that investigation. I interviewed people who were
11 active in the Grand Jury. The only reason that scheme
12 and conspiracy, which went on for 14 years, was
13 uncovered is because somebody was indicted for another
14 crime.

15 And in order to carry favor and get a more
16 favorable sentence from the judges, turned state's
17 evidence on the people committing the impersonation
18 fraud.

19 Now, the other examples, I have
20 interviewed people who personally committed
21 impersonation fraud. My colleague Glen Simpson, who
22 is a news reporter for Wall Street Journal has
23 interviewed people who personally committed
24 impersonation fraud.

25 Glen Simpson wrote a book with Larry



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1 Sabato, who is the premiere political scientist at the
2 University of Virginia. The book is called "Dirty
3 Little Secrets."

4 They interviewed people who committed
5 impersonation fraud. Now, why can't I give you their
6 names? Well, it's a felony. It's not exactly that
7 you're going to get people to come out and use their
8 names.

9 I've interviewed those people. I will
10 turn over my notes. I just can't turn over the names
11 of those people.

12 Is it common? Probably not. Does it
13 happen? You betcha. And it is easily done. I can
14 give you ten different ways.

15 You can vote in someone else's name. You
16 can vote for someone who's dead or you can vote and
17 create a completely fictitious person and vote for
18 that person.

19 I can give you about ten different ways to
20 do it with almost no way of being detected. And with
21 almost no ways of knowing that it was done.

22 Now, lastly about prosecutors: I want to
23 reiterate what Secretary Rokita said about
24 prosecutors.

25 This goes at the very bottom of their



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1 priority list for very obvious reasons. You are going
2 to be accused of being partisan no matter who you go
3 after.

4 You're either going to be viewed, as
5 Secretary Rokita said, as a trader or someone who is
6 on some kind of vendetta.

7 I interviewed the U.S. attorney for the
8 northern district of Louisiana, Mr. Washington, who
9 told me, very specifically, that prosecutors are very
10 loathe to go into these kind of cases because quote,
11 we can't do much of anything about ballot box
12 improprieties until the election is over, and.

13 And the closer we get to the election, the
14 less willing we are to get involved because of just
15 the appearance of impropriety, just the appearance of
16 the federal government somehow shaving this election
17 not to occur.

18 If you'll recall the U.S. Attorneys'
19 scandal in 2006 that involved Attorney General
20 Gonzales, one of the major accusations against him was
21 that indictments against the group Acorn had been
22 filed just before the election.

23 And the charge was, and it was certainly
24 at the Center of Congressional Hearings of the U.S.
25 Attorneys, the charge was that this was a clearly



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1 partisan attempt to influence the election.

2 Well, we now have two more years' of
3 experience with Acorn, and we now know a little bit
4 more about what they were about.

5 In Nevada it was a Democratic Attorney
6 General and a Democratic Secretary of State that
7 became so upset by Acorn's tactics that they asked the
8 FBI to raid their offices and you saw what happened.

9 One of the things we learned by the way
10 that what Acorn was doing was that it was employing
11 many of their Registrar's from a work release program
12 at the local prison, including several of the people
13 leading their teams for the Voter Registration efforts
14 have been convicted of identity theft.

15 In other words, Acorn, in Nevada, at
16 least, was hiring specialists.

17 Now, I can understand Justice Department
18 guidelines saying that Acorn should not be indicted
19 just prior to an election. What I can't understand is
20 that that is then used as proof that the prosecutions
21 of these cases are very easy.

22 They are not very easy. And I will just
23 tell you if any prosecutor ever files these cases,
24 they have personally told me, many of them, they
25 recognized in their political correctness that charges



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1 of discrimination and Jim Crow tactics are going to be
2 leveled against them. And they would view it as
3 unfair, but it also acts as a barrier against everyone
4 in those cases or, at least, makes it a priority.

5 I only have a couple of minutes for
6 questions and I apologize in advance.

7 CHAIRMAN TODD SMITH: I think if you need
8 an hour before your 4:50 flight, you can make it,
9 based on my experience, comfortably.

10 Can you give the opposition here eight
11 minutes or is that too much?

12 JOHN FUND: I will try.

13 CHAIRMAN TODD SMITH: I will give the
14 questions to my Democratic colleagues, given the fact
15 that you're willing to leave.

16 JOHN FUND: That's all right. If I have
17 to leave --

18 CHAIRMAN TODD SMITH: That's all right.
19 If they ask a good question, just get up and leave.

20 JOHN FUND: No. No. No, I don't do that.

21 CHAIRMAN TODD SMITH: Representative
22 Heflin.

23 REPRESENTATIVE HEFLIN: Mr. Fund, I
24 appreciate you being here today.

25 JOHN FUND: Thank you.



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1 REPRESENTATIVE HEFLIN: I wouldn't
2 disagree with you.

3 You said you have to have ID if you're
4 going to rent a movie. If you're going to cash a
5 check. Those are privileges. Those are not rights.

6 I think that voting is a sacred right that
7 we need to protect and enhance in this entire process.
8 So I want to ask you this question: To enhance voter
9 participation, what's your No. One step you will take?

10 JOHN FUND: First of all, let me
11 respectfully disagree with you because if you can name
12 an industrialized democracy that does not require
13 people to show proof of their existence and their
14 identity at the polls, I will send \$7,500 to your
15 favorite charity.

16 We are the only country in the world, the
17 only country in the world, that operates on the honor
18 system when it comes to elections.

19 I believe we need a comprehensive set of
20 reforms to improve voter integrity. I also believe we
21 need a comprehensive reform to improve access to the
22 polls.

23 I also believe we need to spend more time
24 and effort to try to train a new generation of poll
25 workers to replace the average age of 70 at the polls,



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1 who don't necessarily have the most up-to-date
2 knowledge of technology and, therefore, we have a new
3 generation of people that helps these people with the
4 polls.

5 So I don't want to single out a single
6 example. I just want to say we have to do an awful
7 lot because Walter Dean Burnham, who teaches just down
8 the road here at the University of Texas at Austin, is
9 one of the premier political scientists in America,
10 that says we have the soft independent system in any
11 industrialized democracy. And I agree with that.

12 REPRESENTATIVE HEFLIN: Let me ask you
13 this question real quickly: If the attorney for the
14 Northern District --

15 JOHN FUND: The U.S. Attorney for the
16 Northern District of law.

17 REPRESENTATIVE HEFLIN: The attorney for
18 the northern district, that's right, if those guys
19 won't prosecute a case, they're not elected.

20 JOHN FUND: That should tell you
21 something.

22 REPRESENTATIVE HEFLIN: They're hired.

23 JOHN FUND: That should tell you
24 something.

25 REPRESENTATIVE HEFLIN: That ought to be



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1 prosecuted or they should be photo ID.

2 JOHN FUND: No. This is the lowest
3 priority on their staff of things to do, for obvious
4 reasons.

5 It's not a violent crime. There's also
6 political controversy attached to this. That's the
7 reason why preventing this in advance is so important.

8 Once you have the vote cast and thrown in
9 a pile of secret ballots, there is no way you can pull
10 it out.

11 At least, with absentee-ballot fraud,
12 which I do agree is a problem and I do want to address
13 that, at least, with absentee-ballot fraud, when you
14 apply for absentee-ballot, when you have sacrificed,
15 in part, your right to a secret ballot, you leave an
16 evidence trail. There is much less of an evidence
17 trail with in-person voting. Much less.

18 REPRESENTATIVE HEFLIN: So you're saying
19 that we're spending our time here today on the
20 absolute lowest priority issue that we can deal with?

21 JOHN FUND: No. I am not saying that.

22 REPRESENTATIVE HEFLIN: That's what you
23 just said.

24 JOHN FUND: I am not saying that. I am
25 saying that those both are important.



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1 I'm also saying that Indiana, contrary to
2 what you have read, addressed absentee-balloting and
3 addressed in-person voting.

4 You heard about the Voter ID law. You did
5 not hear about the absentee-ballot. Perhaps you will
6 not hear about it until he's testified.

7 I'm saying you could do both. You should
8 do both. Do you have to do them at the same time? I
9 don't necessarily think so but I think you should do
10 both.

11 By the way, Debra Danberg, who used to
12 chair this committee, was very concerned about voter
13 fraud in this state. I interviewed her.

14 In fact, she was very upset because there
15 were senior citizens' groups in this state who did not
16 stand up for the fact that there were senior citizens
17 being victimized by voter fraud.

18 And I do have the legislature, in part,
19 under Democratic leadership and under Republican
20 leadership, did address some of those absentee-ballot
21 voter concerns.

22 You already have visited the issue, in
23 part. I think you need to do more.

24 REPRESENTATIVE HEFLIN: Yes. I agree.

25 CHAIRMAN TODD SMITH: Any questions?



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1 Representative Anchia.

2 REPRESENTATIVE ANCHIA: Isn't it true that
3 you can board a plane without ID?

4 JOHN FUND: Yes. It's a very complicated
5 procedure and I have done it, and I would not want to
6 visit it anymore.

7 REPRESENTATIVE ANCHIA: But there's a
8 secondary opportunity for those who want to board a
9 plane without an ID, correct?

10 JOHN FUND: Well, do you know how well
11 advertised that is?

12 REPRESENTATIVE ANCHIA: Well --

13 JOHN FUND: Ask the people in this room if
14 they know about that.

15 REPRESENTATIVE ANCHIA: But --

16 JOHN FUND: Ask them.

17 REPRESENTATIVE ANCHIA: But you pointed
18 out -- I see a bunch of hands that are raised in the
19 back of the room.

20 But you pointed out that you couldn't get
21 on a plane but, in fact, you can, correct?

22 JOHN FUND: Yes, you can.

23 REPRESENTATIVE ANCHIA: Okay.

24 JOHN FUND: But the federal government
25 does not advise you of it at all. They discourage



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1 that.

2 REPRESENTATIVE ANCHIA: Right, but the
3 point is you represented that you couldn't, but you
4 can. And you can rent a movie without a photo ID,
5 right?

6 JOHN FUND: I don't know that.

7 REPRESENTATIVE ANCHIA: At Blockbuster,
8 for example, you can do it? You can rent a movie at
9 Blockbuster with just your Voter Registration
10 Certificate, right?

11 JOHN FUND: You cannot rent a video at
12 many companies.

13 REPRESENTATIVE ANCHIA: Okay. Okay. Let
14 me ask you: You wrote an article entitled democracy
15 in peril. I haven't had a chance to read your book.
16 I'd love a copy if you're handing them out.

17 September 13, 2004, -- do you remember
18 that article?

19 JOHN FUND: I write 120 articles a year.

20 REPRESENTATIVE ANCHIA: I will eventually
21 remember it as you recall it.

22 REPRESENTATIVE ANCHIA: It appeared in the
23 National Review. September 13, 2004, "Democracy in
24 Peril. America's Election Problems."

25 JOHN FUND: I don't recall that report. I



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1 write for the Wall Street Journal.

2 REPRESENTATIVE ANCHIA: In the article you
3 talked about problems in our election systems and you
4 talked about strap (inaudible) from any local elected
5 offices.

6 JOHN FUND: Yes.

7 REPRESENTATIVE ANCHIA: From the local and
8 elected offices.

9 JOHN FUND: Yes.

10 REPRESENTATIVE ANCHIA: Voter ignorance.
11 Lackadaisical law enforcement and a shortage of
12 trained volunteers.

13 JOHN FUND: Those are all problems.

14 REPRESENTATIVE ANCHIA: You talked about
15 the voter law and that it imposed fraud from the rules
16 on states requiring driver's license bureaus to
17 register anybody applying for licenses, correct; is
18 that right? .

19 You talked about illegal absentee-ballot.
20 You talked about bribing homeless people with
21 cigarettes.

22 Which of those scenarios would be fixed
23 under the Fraser Bill? The bill before us today?
24 Have you read the bill?

25 JOHN FUND: I read several Executive



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1 Summaries. Have I read every single --

2 REPRESENTATIVE ANCHIA: Have you read the
3 bill.

4 JOHN FUND: The entire bill?

5 REPRESENTATIVE ANCHIA: Yes.

6 JOHN FUND: No, I have not read the entire
7 bill.

8 REPRESENTATIVE ANCHIA: Okay. But do you
9 know --

10 JOHN FUND: I have read long Executive
11 Summaries, though.

12 REPRESENTATIVE ANCHIA: Based on your
13 reading of the Executive Summaries, do you have a
14 sense that any of the issues that I articulated that
15 you brought up in Democracy in Peril would be solved
16 by that bill?

17 JOHN FUND: I support a full range of
18 election measures that go far beyond this bill.

19 REPRESENTATIVE ANCHIA: Do you support --

20 JOHN FUND: Excuse me?

21 REPRESENTATIVE ANCHIA: Do you support
22 them in isolation or comprehensively?

23 JOHN FUND: Both. I want to get there as
24 fast as we possibly can.

25 REPRESENTATIVE ANCHIA: Okay.



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1 JOHN FUND: Whether it's piecemeal or
2 comprehensively, I want to get there.

3 REPRESENTATIVE ANCHIA: And if it's a
4 situation like 12 nuns being disenfranchised -- that
5 doesn't give you clause for pause.

6 JOHN FUND: Well, I actually interviewed a
7 couple of those nuns.

8 REPRESENTATIVE ANCHIA: Okay.

9 JOHN FUND: And one of those nuns admitted
10 to me that it was a stunt that they were trying to
11 discredit the law.

12 REPRESENTATIVE ANCHIA: Was she an
13 American citizen?

14 JOHN FUND: Yes.

15 REPRESENTATIVE ANCHIA: Was she of age?
16 Was she of age to vote?

17 JOHN FUND: But what --

18 REPRESENTATIVE ANCHIA: But was she
19 otherwise competent to vote?

20 JOHN FUND: Representative Anchia, she
21 wanted not to vote.

22 REPRESENTATIVE ANCHIA: Was she competent
23 to vote?

24 JOHN FUND: Yes. But she --

25 REPRESENTATIVE ANCHIA: Did she vote a



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1 provisional ballot?

2 JOHN FUND: Yes. Representative Anchia,
3 she wanted not to vote that day.

4 REPRESENTATIVE ANCHIA: Did you interview
5 the other 11?

6 JOHN FUND: I interviewed two of the nuns.

7 REPRESENTATIVE ANCHIA: Did you interview
8 any of the 34 people in Marion County.

9 JOHN FUND: I tried to. I couldn't get
10 the names.

11 REPRESENTATIVE ANCHIA: Okay.

12 JOHN FUND: Because --

13 REPRESENTATIVE ANCHIA: Going back to my
14 first question: Do you think it's a good result if
15 people like that are disenfranchised? If any American
16 is disenfranchised by a piecemeal approach to Voter
17 ID?

18 JOHN FUND: I believe disenfranchisement
19 comes in two forms: One, we fought a long struggle in
20 the civil rights era so that people would not be
21 forced to take poll tests, or take literacy tests or
22 be otherwise intimidated or prevented from voting.
23 That is disenfranchising the voters and that is wrong.

24 It is also disenfranchisement if your
25 civil rights are violated because your vote is diluted



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1 or cancelled out by someone who shouldn't be voting,
2 who's voting twice or doesn't even exist. That is
3 also disenfranchisement.

4 And by the way, that is not my opinion.
5 The Supreme Court of the United States of America gave
6 a unanimous decision in which they vacated the
7 decision of an Arizona court which blocked that
8 state's photo ID law in 2006.

9 It said it is disenfranchisement if
10 people's votes are cancelled out or deleted by people
11 who are voting and shouldn't voter impersonation or
12 voter fraud.

13 REPRESENTATIVE ANCHIA: Are you aware of
14 any voter impersonation cases in Texas?

15 JOHN FUND: Specifically in Texas?

16 REPRESENTATIVE ANCHIA: Yes.

17 JOHN FUND: I have not interviewed people
18 who personally told me they committed voter
19 impersonation in Texas.

20 REPRESENTATIVE ANCHIA: But, sir, are you
21 aware of any cases?

22 JOHN FUND: I'm aware people who have
23 claimed such --

24 REPRESENTATIVE ANCHIA: Are you aware of
25 any documented cases?



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1 JOHN FUND: No.

2 REPRESENTATIVE ANCHIA: Okay. Thank you,
3 Mr. Fund.

4 JOHN FUND: Thank you.

5 I have to leave and I apologize.

6 CHAIRMAN TODD SMITH: Thank you, Mr. Fund
7 and thank you for coming and we appreciate it.

8 JOHN FUND: Thank you.

9 CHAIRMAN TODD SMITH: And I'm sorry you
10 didn't get the full allotment of time.

11 REPRESENTATIVE VEASEY: Mr. Chairman, we
12 wanted to state on the record and we wanted Mr. Fund
13 to hear this before he went out the door, that
14 Mr. N.D. Yang had expressed that he supported the
15 Baker Commission.

16 And like I said earlier, the Baker
17 Commission clearly states that you cannot do Voter ID
18 right now until you have universal support.

19 So we need to be clear because for him to
20 invoke the name of Andrew Young supporting Voter ID is
21 really quite a stretch there.

22 CHAIRMAN TODD SMITH: He does recommend it
23 along with, I guess, the expansion of real ID, and so
24 we gotta figure out what we're going to do in light of
25 the fact that we don't have real ID. But that's



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1 right. I think that's correct.

2 At this time, the chair will call Justin
3 Leavitt from the Brennan Center for Justice at New
4 York University School of Law to testify against
5 Senate Bill 362.

6 MR. LEAVITT: Thank you, very much,
7 Chairman.

8 CHAIRMAN TODD SMITH: Thank you. Please
9 state your name and who you represent.

10 JUSTIN LEAVITT: My name is Justin
11 Leavitt. I'm here on behalf of the Brennan Center for
12 Justice at NYU School of Law.

13 The reference was correct earlier and I
14 want to correct you, Mr. Chair, Mr. Vice-Chair,
15 members of the committee, very much for inviting me
16 here to testify.

17 I agree both that you have an issue that's
18 caused much debate here in front of you. And I think
19 it's very important to take the tact that you set out
20 so early of trying to get at the real facts behind
21 what's at issue here.

22 I have written testimony that I've made
23 available to you all. We've also published
24 documentation, reports I'm happy to make available. I
25 didn't bring enough copies for the committee here



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1 today. And for that I apologize.

2 I'm going to keep my remarks as short as I
3 possibly can and leave you with written testimony.
4 And any questions that you wish to ask, including, I
5 may be the right person to respond to some of the
6 incidents that you brought up before with
7 Ms. Trautman, chairman. So I'm happy to address any
8 of those as you wish.

9 As you mentioned, I'm Justin Leavitt. I'm
10 counsel at Brennan Center for Justice at NYU School of
11 Law. We are self-identified as progressive, but we
12 are vigorously non-partisan and I am strictly here in
13 a non-partisan capacity.

14 The Brennan Center does public policy and
15 research and legal advocacy. We focus on fundamental
16 issues of democracy and justice and we think
17 respectfully that you have one before you here today.

18 Our method, our trade is to focus on
19 evidence and to go back to the facts that have been
20 established and try and root all of our recommendation
21 and all the policies we advocate and the basis of
22 those facts.

23 We emphasize the factual research because
24 we believe the best policy is grounded in careful cost
25 analysis benefit analysis.



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1 And just like you would in starting on a
2 construction project and make a page you wouldn't
3 start a construction project or make a major purchase
4 until you were sure that the benefits outweigh the
5 costs, the same is true in election policy.

6 And particularly for Texas, Section five
7 of the voting rights act requires such an analysis.
8 This hearing today is about proposing restrictions on
9 the way voters can and have traditionally identified
10 themselves at the polls in order to vote.

11 And with respect I'm here to testify
12 against the proposal because I believe the costs do
13 outweigh the benefits, that this legislation you all
14 are considering imposes far more costs than the
15 problems it fixes others will talked to at great
16 length about some of the costs that this legislation
17 may impose.

18 I'd like to focus, if he can in a limited
19 time on the negotiable benefits it provides.

20 In particular, legislation requiring a
21 restricted form of ID in order to vote at the polls
22 gets in only one sort of problem. It's only designed
23 to get at one sort of problem. And that is
24 impersonation fraud. People pretending to be someone
25 else when they show up at the polls.



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1 We have documents at the Brennan Center's
2 document allegations of all kind of fraud. Some of
3 them are reports that we validate, they actually
4 turned out to be true. Many reports that we've
5 debunked that turn-out not to be true when you look at
6 the real facts.

7 Impersonation fraud is special in our
8 research. It's the only sort of fraud that I believe
9 you could possibly address.

10 And what's most notable about it is how
11 strikingly rare it is. Not just to prosecute, but to
12 find, to discover, to report the fact that its
13 existence at all is to notably rare.

14 Now, some attack this research that we've
15 done saying that we're denying that fraud exists. And
16 I want to be perfectly, absolutely clear: That there
17 are some kind of fraud out there.

18 You've mentioned some. Mr. Fund mentioned
19 some. Other witnesses will, no doubt, mention others.
20 It's more rare than people believe because many
21 reports are either sensation lift or sloppy. That
22 confuse fraud with clerical error. But sadly it does
23 occur. People still do buy votes.

24 They still do pressure voters in nursing
25 homes. They still do commit fraud and unfortunately



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1 large amounts of it using absentee-ballots.

2 They did in the 1970s, use party boss
3 systems to break the law using insiders. The
4 longstanding Brooklyn scheme that Mr. Fund mentioned.

5 What they don't do in any significant
6 number is commit the sort of fraud that restrictive ID
7 laws, like the one before you that could possibly fix.

8 At the end of the day, yes, it has
9 happened. There have been a tiny handful of
10 substantiated cases out of hundreds of millions of
11 ballots. Americans are struck and killed by lightning
12 far more often.

13 Now, some, including Secretary Rokita and
14 including Mr. Fund, has said there are only a few of
15 these reports because this sort of fraud is hard to
16 find.

17 But even without eyewitnesses and there
18 are often eyewitnesses, there will often be a victim.
19 And there will always, in every single case, be a
20 paper trail, including poll book signature and other
21 records at the polls.

22 That is to say in this case, there really
23 is a dead body every time because you can go back and
24 look at the poll books to find out if someone else has
25 signed in for that person and whether it was a



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1 mistake, someone above or below in the records, or it
2 was an entirely different individual.

3 We've done that research and so we know
4 it's possible to trace after the fact.

5 And if you want to swing an election,
6 you've gotta do this many times, which means many
7 chances for someone to cry foul.

8 The hunt for this fraud has been on and
9 the major national issue at the same time that federal
10 law enforcement made it a priority and the at the same
11 time that private actors are equipped and extremely
12 motivated to find it when it happens.

13 There were lots and lots and lots of
14 people looking. And so if this fraud happened with
15 any frequency whatsoever, over most of the last
16 decade, you'd expect the phones to have been ringing
17 off the hook. Not prosecutions. Just reports
18 somebody stole my vote by pretending to be me at the
19 polls.

20 Instead it was barely a ring. Every year
21 there are far more reports of UFO sightings than of
22 fraud that an ID could prevent.

23 This exceptionally rare phenomenon has
24 been used to drive policy that unfortunately creates
25 far more real problems than it solves. And



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1 restrictive ID recalls are one good example. They
2 don't solve real problems but they do create them.

3 When you start shutting down the rules
4 that voters can say that they are who they say they
5 are: You start shutting out eligible voters. Real
6 people.

7 Most eligible voters we know have ID and
8 have it handy, even photo ID. But many do not.
9 Disproportionately elderly and minority citizens.

10 I was behind one such senior citizen in
11 line at the airport on the way out here. She did not
12 have ID. She didn't have photo ID and she didn't have
13 other backup ID. And she went through the very same
14 process that Representative Anchia asked Mr. Fund
15 about. The secondary screening it took. I know
16 because I waited for her.

17 It took 15 minutes. She went through.
18 She had the x-ray scan. She got through and was able
19 to get onto the plane. And that's because private
20 industry and the federal government all recognize that
21 there are some citizens out there in the 21st century
22 who simply don't have some forms of ID and they make
23 accommodations for that.

24 It is not easy. It's much easier to live
25 in modern society if you have an ID, that's true and



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1 Andrew Young believed that's true. And that's right.
2 But we understand private entity understand and the
3 government has responsibility to make sure that when a
4 vote -- when a right is provided for each, as voting
5 is, that everyone can be validly accommodated have
6 that every eligible citizen will have that opportunity
7 to exercise that right, just like the woman in front
8 of me in line at the airport.

9 Making things more difficult at the polls,
10 by the way, also increases the burden on poll workers
11 and on election officials. More restrictive ID means
12 more confusion at the polls. And for those who don't
13 have ID with them, more anger.

14 It also means more provisional ballots,
15 right in the most hectic period of the election cycle.

16 And your question, Mr. Chair, about
17 provisional ballots in Marion County is it's spot on
18 in that respect. It is a concern and should be a
19 concern.

20 I see that I'm coming down to the end of
21 my time have I want to address two things if I can.

22 One is the argument, and we heard it
23 before, that asking for photo ID will increase
24 confidence in the system.

25 And I want to call special attention to



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1 the study have the only study to do, empirical
2 evidence, they went out and asked voters who live in
3 states with photo ID laws and live in states without
4 photo ID laws, do you feel more confident in the
5 elections in your state.

6 And the voters responded with unmistakable
7 equanimity. It did not have an effect. There was no
8 statistically correlation. If you believe they're
9 flawed, you're going to believe they're fraud whether
10 somebody asks you for an ID or not.

11 And if you don't believe there's fraud you
12 don't believe there's fraud, whether somebody asks you
13 for an ID. When people say it makes the voters feel
14 more confident, a study has been done and that's been
15 shown not to be true.

16 The other instance that I want to talk
17 about and I didn't want to spend all my time on it,
18 but because the Brennan Center got so popular even
19 before I got up here, I did want to mention that I
20 actually agree with you chairman on turn-out studies
21 and the limitations on looking at turn-out to see how
22 these things effect voters.

23 I believe another witness will mention
24 this in much more detail. I believe it's up to you.
25 Two more sentences on this particular topic.



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1 CHAIRMAN TODD SMITH: If you agree with
2 me. Go, go ahead.

3 JUSTIN LEAVITT: Absolutely. It is part
4 of why the Brennan Center has not done a study on how
5 photo ID effects turn-out, in part, because we agree
6 there are many limitation necessary these sorts of
7 studies. You need a lot of variables over a lot of
8 time in order to really come up with a really
9 conclusive answer is on how turn-out is effected in
10 one way or the other.

11 That's absolutely correct, and there will
12 be other witnesses who, I believe, will testify to
13 that in much more detail.

14 What we have done is something we think
15 more reliable is we've asked the citizens. We've done
16 a survey. And there are others, we're not the only
17 ones who have done the survey.

18 We've asked citizens, do you have X, Y and
19 Z sort of ID. And the answer was, most do but a
20 disturbing number don't. And we're very concerned
21 that anyone, Texas or otherwise, would take action to
22 solve a problem that doesn't exist, but that actually
23 creates a problem for all of those citizens who told
24 us, we don't have what you're asking us to get.

25 CHAIRMAN TODD SMITH: Okay. Let me just



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1 say, thank you, I appreciate the spirit of your
2 testimony. That's far closer to being the kind of
3 oppositional testimony that I expected and I was a
4 little surprised by Ms. Trautman's allegations that
5 there is no evidence of any kind of voter fraud of any
6 kind.

7 You do not agree with her on that; is that
8 correct?

9 JUSTIN LEAVITT: I do not agree with her
10 on that. That is correct.

11 I don't know about Harris County in
12 particular. I have no experience in Harris County.

13 CHAIRMAN TODD SMITH: I understand that
14 the but the fact is that there is substantial amount
15 of evidence of voter fraud, but your position is that
16 only a handful of substantiated cases exist with
17 regard to impersonation; is that correct?

18 JUSTIN LEAVITT: That's correct.

19 CHAIRMAN TODD SMITH: There's an extensive
20 body of evidence to support the notion of fraud with
21 regard to absentee-ballots?

22 JUSTIN LEAVITT: That's correct.

23 CHAIRMAN TODD SMITH: And so while we're
24 on that subject: Do you have any suggestions on how
25 this committee might be able to get at the area of



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1 fraud where there is no disagreement that is out there
2 and is a major problem? Any suggestions on what we do
3 to deal with that?

4 JUSTIN LEAVITT: It is a very sticky
5 issue. Federal law actually provided one way to get
6 at that and I believe that the rate of
7 absentee-ballots has dropped substantially since 2002.

8 The Help America Vote Act of 2002 requires
9 and Texas, I understand has implemented, a system that
10 in some ways catches absentee-ballot fraud. When you
11 register to vote you're required to give information
12 over.

13 The Secretary of State will try to match
14 that information up to other government lists. If you
15 don't match, then you have to submit some form of
16 identification of the same identification that is now
17 permitted at the polls understand Texas law.

18 CHAIRMAN TODD SMITH: Did you identify a
19 state that's currently doing that?

20 JUSTIN LEAVITT: I believe every state,
21 including Texas --

22 CHAIRMAN TODD SMITH: Okay.

23 JUSTIN LEAVITT: -- is currently doing
24 that.

25 CHAIRMAN TODD SMITH: Okay.



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1 MR. LEAVITT: And so another way to get at
2 --

3 CHAIRMAN TODD SMITH: I'm obviously
4 looking for something that we do not currently do
5 because we've got dead people voting.

6 Even if you presume that all those people
7 are doing it by way of absentee-ballots, which I don't
8 know that we can, but even if you did that, you know,
9 you how can we prevent that?

10 JUSTIN LEAVITT: Two items really quickly.

11 One, I'm not sure that you do have dead
12 people voting in anywhere near the numbers that are
13 often cited.

14 You mentioned earlier a Georgia study in
15 the Atlanta Journal Constitution. That one's
16 notorious. It came out in 2000 and said 5,400 dead
17 people voted.

18 They actually did an investigation have
19 the way they came up with that which were a record
20 matching system that we've shown repeatedly to be
21 fraud.

22 We mentioned one person that the reporter
23 was dead certain had voted while deceased. And they
24 went back and -- that's why I mentioned the poll book
25 signatures.



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1 They went back and they looked at the poll
2 book signatures and it's not the same guy.

3 CHAIRMAN TODD SMITH: So what is the
4 evidence that you agree is out there that is extensive
5 with regard to absentee-ballots?

6 JUSTIN LEAVITT: You have situations like
7 in Indiana, where there was some absentee vote,
8 coercion of absentee-ballots, where there was people
9 applying for absentee-ballots. That was before 2002.
10 That was before the Help America Vote Act was
11 implemented.

12 In Miami, the same thing in 1997, before
13 the Help America Vote Act was implemented. The Help
14 America Vote Act was actually done quite a bit to get
15 at that.

16 But the other way you can avoid more
17 absentee-ballot fraud is to make it as easy as
18 possible while still maintaining the security of
19 voting at the polls.

20 That is the harder you make it to vote at
21 the polls, the more people you're going to get drive
22 en to the absentee-ballot system. And the more people
23 you're going to lay out there into the system where
24 it's much harder to actually control against fraud.

25 CHAIRMAN TODD SMITH: Okay.



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1 MR. LEAVITT: At the polls you actually
2 have a reasonably set reasonable set of safeguards,
3 including people showing up in-person and swearing,
4 including signing in, including your being able to see
5 their face.

6 Including the idea that as you mention the
7 ID that Texas currently requires, either a
8 registration certificate or one of the broad means of
9 documentary ID.

10 CHAIRMAN TODD SMITH: Okay. You mentioned
11 the study that you did do, and it's 2.6, 2.9 percent.
12 You know the study what I'm talking about?

13 MR. LEAVITT: There are several. The one
14 that we did --

15 CHAIRMAN TODD SMITH: I just want to get
16 your specific answer.

17 Was that from comparing in Indiana that
18 has no state identification that has no identification
19 requirement? What's what was the comparison?

20 MR. LEAVITT: We have not done a
21 comparison. What we've done is we have --

22 CHAIRMAN TODD SMITH: What is that two
23 point something percent figure? What was that?

24 JUSTIN LEAVITT: I believe that was a
25 study done by -- it's possible it was Al Foretto



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1 CHAIRMAN TODD SMITH: It was comparing
2 what to what?

3 MR. LEAVITT: It was comparing -- I'm
4 sorry. That study are was not a comparison study
5 state to state.

6 I'm going to leave that question, if I
7 may, for one of the other witnesses who will know this
8 better.

9 CHAIRMAN TODD SMITH: Okay.

10 MR. LEAVITT: I am not sure.

11 CHAIRMAN TODD SMITH: Okay.

12 JUSTIN LEAVITT: We have done studies of
13 the rate at which citizens have or don't have this,
14 not the turn-out before or after a particular
15 election.

16 CHAIRMAN TODD SMITH: Okay. You agree
17 with me that in terms of the effect of Indiana versus
18 some common standard, I thought that the Brennan study
19 compared it to a no-identification state. That their
20 study was, kind of, all over the map. Some say it
21 increased turn-out. Some say it decreased turn-out.

22 JUSTIN LEAVITT: Yes.

23 CHAIRMAN TODD SMITH: But you agree with
24 me that there isn't any evidence of any kind, nothing,
25 no study, nothing substantiated to any degree that



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1 would suggest that a change from current law in Texas
2 where we already require identification, either one
3 photo or one non-photo -- when those people just
4 layout a photo to change in the law where you didn't
5 have the photo which was provided free or you back it
6 up with two forms of non-photo, a Voter Registration
7 card or some form of additional document, you agree
8 with me that there's not any study of any kind that
9 will indicate that that would suppress poor,
10 uneducated and minority voters? Right? You agree
11 with me?

12 MR. LEAVITT: I can't agree with you, in
13 part, because I don't know all of the details of what
14 was submitted in Arizona.

15 Arizona has a system where you submit one
16 photo ID or two forms of non photo ID.

17 CHAIRMAN TODD SMITH: Okay. You're not
18 aware of any?

19 JUSTIN LEAVITT: Correct.

20 CHAIRMAN TODD SMITH: Is that correct?

21 JUSTIN LEAVITT: That's correct.

22 CHAIRMAN TODD SMITH: Okay.

23 I want you to just explain to me in a
24 little more detail and then I want other members to
25 ask questions.



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1 You admit that it's hard to find in terms
2 of hard to prove evidence of voter impersonation?

3 JUSTIN LEAVITT: It won't be hard. It
4 will be hard to prosecute but I don't believe it will
5 be hard to find.

6 CHAIRMAN TODD SMITH: Okay. Hard to
7 prosecute.

8 And with regard to voter fraud -- you
9 agree with me that looking at the extent of
10 prosecution is really not the most accurate way to try
11 to determine the extent to which it occurs in you
12 agree with that, don't you?

13 JUSTIN LEAVITT: Yes.

14 CHAIRMAN TODD SMITH: Now, the absence of
15 prosecution does not mean that it does not occur? But
16 on the other hand, I will grant you that the absence
17 of prosecution doesn't mean that it does occur,
18 either? You agree with that, right?

19 JUSTIN LEAVITT: I think that's accurate.
20 I think there are better metrics, that I know whether
21 it does or does not occur.

22 CHAIRMAN TODD SMITH: All right. And when
23 you say there's always a paper trail at the polls,
24 help me understand that.

25 Because my understanding is that and I may



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1 be wrong, that with regard to absentee-ballot, you've
2 got a much better paper trail because you have an
3 envelope. You have an address. You have a stamp.

4 Whereas at the poll, you primarily have a
5 signature, whereas on the absentee-ballot, you have
6 that, plus you have the envelope and a stamp and the
7 typewriter that typed the information on the outside
8 of the envelope, well, I guess most of the time that
9 is a state issued document.

10 So I guess you have a stamp and you have a
11 signature and you have an address.

12 Tell me why -- is it true that that paper
13 trail is more extensive than the paper trail at the
14 ballot office?

15 MR. LEAVITT: That paper trail is mildly
16 more extensive, but the paper trail at the polls is
17 more than enough to tell you did somebody vote in that
18 person's name are or not.

19 CHAIRMAN TODD SMITH: Okay.

20 MR. LEAVITT: And that's what we focused
21 on.

22 CHAIRMAN TODD SMITH: Okay. So because
23 there is a more significant paper trail with regard to
24 absentee-ballot, you would agree that it is, at least,
25 marginally easier to identify and prosecute than it is



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1 at the polls?

2 MR. LEAVITT: Yes.

3 CHAIRMAN TODD SMITH: Okay.

4 Representative -- hands up. I'm trying to be fair
5 here.

6 Anchia.

7 REPRESENTATIVE ANCHIA: I want to be real
8 careful when we talk about dead people voting,
9 Mr. Chairman.

10 I don't know that there are any studies
11 post-HAVA that show that that's happening at any rate
12 greater than the rate of voter impersonation, which is
13 pretty small can you talk about why dead people voting
14 is hard. And let's leave the obvious because they're
15 dead out.

16 But let's talk about why it's hard to vote
17 for a person when he may be deceased using their
18 identity. Let's talk about the mechanics of that and
19 then let's talk about the mechanics of HAVA and how
20 it's implemented in Texas.

21 Are you aware of how its implemented here?

22 JUSTIN LEAVITT: I believe so.

23 REPRESENTATIVE ANCHIA: Okay. And if you
24 can speak to that, that would be helpful. Because I
25 don't want the impression to be left with the media or



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1 the audience or the members of the committee that this
2 is happening on a large scale post-HAVA.

3 JUSTIN LEAVITT: No. That's entirely
4 right.

5 And one clarification, if I may: That the
6 reports that have been done post-HAVA, of which I'm
7 aware, deal with allegations that dead people have
8 been found on the rolls or that dead people have
9 voted.

10 And when there's been follow up, I know
11 there's a notorious case, the Texas Watchdog blog and
12 then the Dallas Morning News, that when there's been
13 follow up, the follow-up have actually been that dead
14 people have not voted.

15 That is, there are lots of claims, but the
16 claims actually turn-out, for the same reasons as in
17 Georgia, not to pan out on photo investigation.

18 So you'd ask: How is it possible or how
19 does Texas and other states safeguard against this?

20 When you register to vote, you have to
21 submit your driver's license or Social Security
22 number, and that information is matched up from place
23 to place with Department of Public Safety here in
24 Texas and with Social Security Administration records.

25 So if I'm a new voter and I am submitting



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1 a ballot in the name of a dead person, then I have to
2 register in the name of that person. The information
3 has to be cross-referenced.

4 And by the way, Motor Vehicles and DPS
5 would most likely know if I'm deceased. If that
6 doesn't square up, if that doesn't match or if it
7 returns, hey, this persons dead, then I have to submit
8 a document, just like the documents that Texas
9 currently requires at the polls in that person's name.

10 And that's, actually, fairly difficult,
11 or, at least, it takes a great degree of energy in
12 order to fake.

13 And so there aren't a lot of people
14 registering in the names of neural dead people and
15 voting since the Help America Vote Act.

16 There also aren't a lot of people who are
17 voting in the names of people who have been dead on
18 the rolls for a long time.

19 HAVA also requires counties and the state
20 to screen their registration lists against the list of
21 people who have recently died. They get those lists
22 from Social Security. They get those lists from, I
23 believe, county departments of health.

24 And as far as I can tell, many states have
25 I'm not sure how Texas' compliance with this has been,



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1 I just don't know but many states are finding it
2 entirely impossible to get dead people off of the
3 roles fairly quickly after they actually pass on.

4 And so for those people, as well, if they
5 attempt to vote, they're no longer registered.
6 They're no longer on the rolls and that ballot is
7 automatically flagged or at the polls they won't be
8 able to cast a regular ballot.

9 So the Help America Vote Act provides in
10 each of these ways have. New people getting on and
11 old people coming off. A good screen for those who
12 are no longer eligible.

13 REPRESENTATIVE ANCHIA: Would you be
14 surprised if the latest State Auditor Report that
15 scrubbed the HAVA database found that there were zero
16 persons reviewed from that database who were deceased
17 who had voted?

18 MR. LEAVITT: I wouldn't be surprised at
19 all. We keep going back and finding where dead people
20 had voted and the follow-up shows that zero have
21 actually cast ballots.

22 REPRESENTATIVE ANCHIA: In fact, there
23 were 49,000 people reviewed from the list to about 23,
24 25,000 of them were deceased, which is not a
25 surprising number when you consider we've got 13



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1 million people on the list and people do die during
2 the course of the year. Registered voters do die at
3 .04 percent.

4 So about 23,000 people who are deceased
5 and possible felons were scrubbed from the list.

6 And the number who have voted were zero.

7 JUSTIN LEAVITT: That's consistent with
8 what they found in other states.

9 REPRESENTATIVE ANCHIA: And I believe the
10 instance or the frequency with which we update
11 statistics are, in some cases, weekly and other cases
12 monthly under the law here in Texas. I'll confirm
13 that with the Secretary of State's office, but we
14 appreciate your testimony. Thank you.

15 CHAIRMAN TODD SMITH: Representative
16 Bonnen.

17 REPRESENTATIVE BONNEN: Thank you. I
18 appreciate your comments very respectfully in opening
19 testimony of today.

20 CHAIRMAN TODD SMITH: Thank you.

21 REPRESENTATIVE BONNEN: Do you live in New
22 York?

23 JUSTIN LEAVITT: I don't actually live in
24 New York. I live in California now.

25 REPRESENTATIVE BONNEN: Even better.



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1 That's very surprising for a New Yorker.

2 I wanted to ask you some questions about,
3 again, it's an issue that I've been very curious about
4 and you visited about how there are no studies and the
5 impact the studies would have the impact that a Voter
6 ID would.

7 And what's interesting to me about that is
8 that we do have states we can look at where we can
9 just look at the numbers. I mean, we don't have to do
10 a specific study. We just look at results.

11 Are you familiar with the turn-out
12 situation in Georgia? And I want to quote some
13 numbers to you here and see if they make sense to you.

14 This is the Joelette Center on Political
15 and Economic Studies. With that Georgians saw that
16 the overall turn-out in Georgia increased 6.7 percent
17 points from the 2004 election. It was the
18 second-highest increase in turn-out of any state in
19 the country in that the black share of the statewide
20 vote increased from 25 percent in 2004, and this is
21 obviously 2008 numbers.

22 The interesting thing about that is that
23 they're talking about 25 percent. And that is, when
24 the ID law was in effect, it went up 25 percent. To
25 -- up to 30 percent in the '08 election.



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1 The interesting thing is that the African
2 American vote nationwide increased from 11 to
3 13 percent in that cycle.

4 So, I mean, does that sound logical to
5 you?

6 JUSTIN LEAVITT: It absolutely sounds
7 logical, but its sound like it has nothing to do with
8 Voter ID.

9 REPRESENTATIVE BONNEN: I think that's a
10 great statement.

11 MR. LEAVITT: Let me say two things if I
12 can.

13 One, just -- Chairman Smith asked me
14 whether I knew about the effects of particular ID
15 structure one photo ID or two non-photo IDs, and
16 that's where I'm just not aware in Arizona.

17 There are studies that show in effect a
18 disproportionate impact on those with lower income.

19 Photo ID laws, in particular, those are
20 photo ID because that's been the controversy.

21 REPRESENTATIVE BONNEN: I respect that.
22 But I'm asking you about specific, factual results
23 from Georgia.

24 JUSTIN LEAVITT: And leave, and the
25 Georgia election, this is why gauging an effective law



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1 based on turn-out is a disadvantage. The Georgia
2 election in 2008 featured an investment of resources
3 by both President Obama and by Senator McCain,
4 challenging Georgia and making it a contingent state
5 for the first time, as I'm aware, on the presidential
6 level in decades.

7 We also had -- for the African American
8 turn-out, they also had an African American caused at
9 the very top of the ticket. I would expect for the
10 African American turn-out to go through the roof in
11 Georgia.

12 REPRESENTATIVE BONNEN: Correct. Let me
13 point out, though, we're not talking about how many
14 individual numbers it went up. It's about percentage
15 increase, isn't it?

16 MR. LEAVITT: And I would argue with you.

17 REPRESENTATIVE BONNEN: I'm not arguing
18 with you. I am agreeing with you. Voter intensity
19 should have been higher. African American voter
20 should have been higher. Significant dollars would
21 have been spent on a different cycle, but to suggest
22 that they were specifically different at one point
23 versus another.

24 JUSTIN LEAVITT: And I'm not suggesting
25 that.



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1 REPRESENTATIVE BONNEN: It is interesting.
2 That's why I pointed out that the national vote
3 increased for African Americans 11 to 13 percent,
4 whereas in Georgia it went up 30 percent.

5 JUSTIN LEAVITT: And I attribute that to
6 the very specific local nature of the election.

7 The more money you spend in a local race
8 and the more intention attention you have on a local
9 race -- that can really drive turn-out.

10 REPRESENTATIVE BONNEN: Right. Let me
11 make this point, then, with two things I'd ask you to
12 consider: Clearly Voter ID did not suppress or amend
13 the vote?

14 JUSTIN LEAVITT: I'm going to make the
15 same express as Chairman Smith: We don't yet know,
16 this is why it's dangerous, whether the increase in
17 turn-out would have been 35, 40, 45, 50 percent had it
18 not been for the Voter ID law.

19 That is, we know it went up a bunch. We
20 don't know how much more it would have gone up had
21 there been no law.

22 REPRESENTATIVE BONNEN: Well, we know it
23 went up significantly compared to the national
24 average. We know that it went up significantly
25 compared to a neighboring state with no Voter ID such



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1 as Mississippi.

2 JUSTIN LEAVITT: Which was not contested.

3 REPRESENTATIVE BONNEN: Correct. But we
4 also then know by your comments, I think it's fair to
5 not concede on both sides, that -- and I'm not picking
6 a challenge here -- but Representative Anchia made the
7 comment earlier about how Texas has bad voting numbers
8 and this and that.

9 But the arguments you made were what came
10 to my mind was when Representative Anchia discussed,
11 that is, that I don't know the last time that we had a
12 November election that we've had a presidential
13 candidate spend any significant sum of money to drive
14 the election.

15 So I think you would agree with me it's,
16 kind of, fair to concede to some extent on both sides
17 that it is largely driven by who's spending the
18 dollars? Who's driving the vote? Who's making those
19 requests?

20 JUSTIN LEAVITT: That's true, but I would
21 say two things: One, you don't want to do anything.
22 I agree this is my perspective. You don't want to
23 take a step that drops your current level of
24 participation.

25 And the second thing is: You don't want



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1 to put any additional unnecessary burden on voters who
2 haven't participated thus far with the amount right
3 amount that want to come into the process.

4 REPRESENTATIVE BONNEN: And I understand
5 that.

6 JUSTIN LEAVITT: Secondly that nobody here
7 wants to put that unnecessary burden on.

8 REPRESENTATIVE BONNEN: I understand that.
9 I'm simply making a point that you're explaining the
10 Georgia turn-out numbers by the amount of money being
11 spent in Georgia. And I respect that. And I think
12 that has an impact.

13 But I do think it also helps show that
14 Voter ID clearly did not stimey that vote.

15 But I also would respectfully say that
16 then if we're going to accept that argument in Georgia
17 to some degree, not completely, but to some degree, do
18 we have to accept are the converse to that argument
19 when you look at other states, such as Texas and what
20 have you and say, well, but the vote wasn't as high as
21 we would have thought?

22 Again, if it's fair to you, it's fair to
23 me, I guess is the point I'm trying to make.

24 JUSTIN LEAVITT: And I understand the
25 point you're making. I guess I just disagree with the



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1 premise.

2 REPRESENTATIVE BONNEN: The premise,
3 you're saying the reason it went up in Georgia is
4 because they spent a lot of money on the presidential
5 election, but then when we discussed in other states
6 that wasn't inundated with presidential dollars at
7 that point you wouldn't apply there?

8 JUSTIN LEAVITT: There are probably 20 to
9 30 different factors that draw a turn-out, including
10 the weather on a particular day. And respectfully
11 you've gotta look at them. And in Georgia, you've
12 gotta look at them.

13 REPRESENTATIVE BONNEN: Well, I think we
14 do agree.

15 MR. LEAVITT: Okay.

16 REPRESENTATIVE BONNEN: I think we do
17 agree that you can't hang your hat on that being the
18 factor for it not having a negative impact in Georgia,
19 just as I can't hang my hat on it being a having a
20 negative impact or not in Texas.

21 What I'm simply saying, the arguments are
22 somewhat a friendly stand off. If you're going to use
23 it in Georgia, I suggest you ought to use it
24 elsewhere?

25 JUSTIN LEAVITT: They do have a different



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1 turn-out somewhere, but that's why we think it's so
2 important to survey eligible citizens to find out
3 who's out there who either does or does not have the
4 sort of ID you're talking about.

5 This is my primary agreement with Chairman
6 Smith.

7 REPRESENTATIVE BONNEN: Right.

8 MR. LEAVITT: Yes.

9 REPRESENTATIVE BONNEN: And I agree with
10 you. I think when you have a voter increase from,
11 Nationally speaking, with the African American
12 population from 11 to 13 percent, and then you have a
13 state that has a 30-percent increase, clearly there
14 wasn't something creating a problem.

15 Because there are other states that
16 probably had significant funds being spent to
17 encourage turn-out that didn't even have that kind of
18 a turn-out?

19 MR. LEAVITT: I think the record on what
20 caused the turn-out and what did not cause the
21 turn-out and where it might have been is probably
22 going to have to wait for another couple of cycles
23 until we get another data on how to hash out -- bonus
24 I think that's a fair comment to make if we're going
25 to hold that comment true in all scenarios.



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1 MR. LEAVITT: Thank you.

2 CHAIRMAN TODD SMITH: Representative
3 Brown.

4 REPRESENTATIVE BROWN: Thank you,
5 Mr. Chairman.

6 I'd like to go back to something that you
7 were explaining awhile ago about when you -- okay.

8 Let me put it this way: Are you aware
9 that when you send in a request for a change to a
10 Voter Registration card and your information is not
11 complete, for one reason for another -- oh, well, the
12 main thing is you were saying that you fill in your
13 Social Security number and your driver's license
14 number.

15 Are you aware that if you leave both those
16 boxes blank and send it in, they will send it back to
17 you saying that it's insufficient information? If you
18 did it a second time, they will send you another
19 letter. If you did it a second time, they
20 automatically register you?

21 Are you aware of that in Texas?

22 MR. LEAVITT: I'm glad to hear that's the
23 case. That's one interpretation of federal law and
24 that is one of the interpretations that we actually
25 advocate for.



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1 REPRESENTATIVE BROWN: Really?

2 JUSTIN LEAVITT: However, for those
3 people, federal law requires that you have to show
4 some form of documentary I.D. at the polls.

5 REPRESENTATIVE BROWN: Okay. All right.

6 JUSTIN LEAVITT: From leave. From the
7 broad list --

8 REPRESENTATIVE BROWN: Okay. All right.
9 Are you aware in that that's a letter that's sent back
10 telling you that you have insufficient information and
11 you cannot be registered, that that is used as a form
12 of identification? That letter can be presented?

13 The Secretary of State is here in the
14 room, and she verified this the other day when she
15 testified before us. So to me, that is the real.

16 JUSTIN LEAVITT: I'm not aware of how
17 often that's done at all. I was not aware that that
18 was the case under Texas law.

19 REPRESENTATIVE BROWN: Yes, it is.

20 One other thing. I just think that --
21 we're accused so much of trying to suppress the vote,
22 That that's the only reason that we're pressing for
23 photo IDs and trying to suppress the vote.

24 But wouldn't you agree with me that in the
25 situation that was just cited a while ago, it was a



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1 30-percent increase in turn-out, in a state that has
2 photo ID, that we are really a miserable failure if
3 that's our goal, going into these states and
4 supporting photo ID, if the turn-out is that much,
5 that we are really failing miserably?

6 MR. LEAVITT: I do believe that some who
7 advocate this, and I certainly wouldn't accuse any
8 member of this committee of being in that camp.

9 REPRESENTATIVE BROWN: Thank you.

10 MR. LEAVITT: But there are some who do
11 believe that this is a means to suppress the vote,
12 however successful, and I believe that more people
13 sincerely believe that they are trying to combat a
14 problem that's out there.

15 It's just that I happen to believe that
16 they're mistaken.

17 In the Georgia case, for example --

18 REPRESENTATIVE BROWN: I asked you: Do
19 you agree with me that we're a miserable failure in
20 such states when the turn-out goes up that
21 significantly?

22 MR. LEAVITT: The problem with the
23 turn-out study is you don't know how much more it
24 would have gone up if that idea hadn't been in place.

25 REPRESENTATIVE BROWN: But when you're



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1 comparing it to other states with an 11-percent
2 increase, it was such a significant increase. It was
3 still and you still won't agree with me?

4 JUSTIN LEAVITT: I'm afraid I wouldn't. I
5 mean, Georgia had many problems before this election.
6 Their turn-out rate was not that spectacular leading
7 up to this election.

8 To find an improvement, I think we can all
9 be happy about the improvement, based on this election
10 and the fact that more eligible Georgians are voting.
11 I celebrate that.

12 I just simply don't know how many more
13 people would have been able to vote if that law or any
14 other law hadn't been in place.

15 CHAIRMAN TODD SMITH: And I think I've
16 already made it clear that I think we're on the same
17 page on that issue.

18 I am sort of fabulously unimpressed with
19 either sides' arguments, especially that this marginal
20 change in our states law, in our state, comparing what
21 we currently do to what the Senate has proposed doing.
22 I am fabulously unimpressed with either sides argument
23 that this legislation would in any material way either
24 enhance or suppress turn-out.

25 And you know, we have agreed that there's



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1 not any evidence of any kind that is credible in any
2 way that would support either of those allegations at
3 this point, right? You would agree with that?

4 JUSTIN LEAVITT: I would think the
5 turn-out studies have been inconclusive and that I
6 would agree.

7 CHAIRMAN TODD SMITH: And those studies
8 have all been based on a comparison between one thing
9 and another, that is far more stark in its contrast
10 than what we're proposing here in Texas, if we start
11 with the Senate Bill.

12 JUSTIN LEAVITT: I believe that's right.
13 Colleagues know their studies better than I.

14 I don't think it's right to say that
15 there's no evidence that what Texas is proposing would
16 have an effect, though.

17 And that's where I'm afraid will have to
18 differ. The turn-outs to these have been to date,
19 that's right. They have been absolutely inconclusive.

20 The studies of both registered voters and
21 eligible citizens who do or don't have a certain type
22 of ID over -- that provides for me a more reliable
23 basis of evidence of saying who is this really going
24 to effect.

25 CHAIRMAN TODD SMITH: And you agree that



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1 by providing a non-photo alternative, in addition to
2 what other means we can take would significantly
3 lessen any marginal additional burden on some voters?
4 You agree with that?

5 MR. LEAVITT: I do. I think it's an
6 unnecessary but relatively positive step.

7 CHAIRMAN TODD SMITH: Okay. And you
8 agree, also, if the goal is to insure with regard to
9 these provisional ballots, that is, many of them that
10 should count, do count, do you agree and are you
11 familiar with the way that Florida handles those
12 provisional ballots?

13 And I get this from the descending opinion
14 in the Supreme Court, where they go out of their way
15 to praise Florida in the way that they handle the
16 provisional ballots, not necessarily the legislation,
17 but the way that they handle the provisional ballots,
18 they go out of their way to strike a distinction
19 between Florida and Indiana.

20 And they refuse to go so far as to express
21 the statement that they would find the law in Florida
22 constitutional. But in my opinion, they certainly
23 apply that they might very well, even the most liberal
24 dissenting justices.

25 Because of the fact with regard to those



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1 provisional ballots, instead of them not counting,
2 unless you go through hoops by going downtown within
3 ten days of the vote, they count automatically without
4 the voter doing anything else, unless a group of six
5 committee determines by a majority vote that this is
6 not the vote of the person who cast of the ballot?

7 Do you agree with me that the difference
8 between one route and the other route is material in
9 terms of minimizing any adverse consequences that you
10 figure in this legislation?

11 MR. LEAVITT: I have been cautioned on
12 many occasions not to jump to quickly to phrase
13 Florida's election system and I believe with cause.

14 That said, there are all sorts of problems
15 that provisional ballots themselves cause. And
16 create. And I believe you'll have other witnesses to
17 testify about that as well.

18 It is unquestionably better to have a
19 system in which provisionals automatically count than
20 a system in which they don't. And the Department of
21 Justice actually required that of Florida. That was
22 condition under which they would declare Florida's
23 rule when Florida changed its laws, was that those
24 provisional ballots had to count.

25 There are still other states, in fact,



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1 many other states, that have their election deemed
2 their election systems secure without relying on
3 provisional ballots that accept a broad range of
4 documentation and then accept that that person is who
5 they say they are.

6 Provisional ballots -- I worry about the
7 consistency with which they're counted. I worry about
8 the rates with which they're counted. I worry about
9 the time and expense that it takes to count them.

10 And so I would caution about over-reliance
11 on them. That said, it's better than the alternative
12 where they don't count at all.

13 CHAIRMAN TODD SMITH: Representative
14 Bohac.

15 REPRESENTATIVE BONNEN: Justin, welcome.

16 JUSTIN LEAVITT: Thank you very much, sir.

17 REPRESENTATIVE BOHAC: I've enjoyed your
18 testimony before in front of this committee. I have
19 just a quick question for you.

20 What if we could put the photograph of the
21 individual on the voter card?

22 JUSTIN LEAVITT: On the Voter Registration
23 Certificate you mean?

24 REPRESENTATIVE BOHAC: On the Voter
25 Registration Certificate. Because we really do have



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1 Voter ID now. I mean, we do, right?

2 JUSTIN LEAVITT: Yeah, you require one of
3 the broad range of documents in order to show your
4 identity. That's absolutely right.

5 REPRESENTATIVE BOHAC: But we just don't
6 have photo ID now?

7 JUSTIN LEAVITT: But we do have Voter ID.

8 REPRESENTATIVE BOHAC: What if we could
9 take the person's photograph and put it on the Voter
10 Registration Certificate? Would that be acceptable to
11 you?

12 MR. LEAVITT: If you're going to require
13 that Voter Registration Certificate and didn't allow
14 other documentation, I'd have to come back and say,
15 no, that, too, would be an improvement. It would help
16 as Andrew Young, as Ambassador Young mentioned, it
17 would help other people get identification when they
18 don't currently have photo ID.

19 I would worry a little bit there, too,
20 about the cost and expense and administerability.

21 But the point that you make about Texas'
22 current system, I think, is entirely valid. Texas has
23 a voter law today that requires people to show one of
24 a range of documents, and it requires you to show your
25 registration certificate if you have it, and if you



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1 don't, it allows you to arrive with any number of
2 others.

3 Putting an ID on a Registration
4 Certificate is great if you've got that Registration
5 Certificate on you. But Texas law very sensibly today
6 says if you don't happen to have your Registration
7 Certificate on you, we'll allow you to vote with one
8 of these other forms of ID. And I think that current
9 safeguard is a sensible safeguard that Texas has
10 decided on.

11 So putting a photo on -- if you require
12 that that be the only ID that the voter can present,
13 then I would think that would cause problems, just
14 like requiring just a driver's license, just like
15 requiring just any single kind of ID.

16 REPRESENTATIVE BOHAC: What if we assume
17 for a moment that everybody did have a voter card.
18 Would putting the photograph on that and making that
19 the sole item that you could present to vote and
20 everybody has one and they always have it on them --
21 would that be okay?

22 MR. LEAVITT: It's hard to answer
23 questions about a fictional system or a hypothetical
24 system.

25 REPRESENTATIVE BOHAC: I appreciate the



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1 question. You're testifying on a fictional system
2 now.

3 I mean, the whole testimony is based on a
4 fictional system that we may or may not implement.

5 MR. LEAVITT: Which is why I try to keep
6 my testimony as grounded in real fact that we've
7 investigated as I possibly can. Talking about the
8 studies that have been done. Talking about the rates
9 of fraud that we have seen.

10 It's very difficult to say, you know. If
11 everybody had the sort of ID that were required and
12 everybody carried it were them at all times and
13 everybody showed it to a co-worker and nobody were
14 sent home without being able to vote as a validate
15 caused, then I wouldn't be here because I wouldn't be
16 concerned about that system.

17 But I'd be very concerned that if you put
18 a rule like that in place, it would not be implemented
19 such that everybody had and everybody carried and
20 everybody presented and everybody got to vote.

21 REPRESENTATIVE BOHAC: If they could --
22 and this is my final question to you, let's assume
23 that everybody had one and there was a photograph on
24 the registration card, that that was the medium we
25 used -- would that make competence in the system



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1 greater or less than or the same?

2 MR. LEAVITT: The only evidence that I had
3 seen about voter confidence in the system shows that
4 it would not matter. The only evidence that I have
5 seen is the study the very same state that
6 Representative Anchia decided.

7 It was a national study. It was done with
8 significance assistance. It was a national study and
9 it was done all over the country.

10 And it said, how do you feel? How
11 confident do you feel that there's been no fraud? How
12 confident do you feel that there's been no
13 registration fraud? How confident do you feel that
14 there is no impersonation fraud?

15 And I asked the question five different
16 ways. And they found no correlation whatsoever
17 between the type of ID people were asked for and how
18 confident they felt.

19 So if you asked me would that make people
20 feel more secure, the only data that I have says
21 people would feel exactly the way they feel today.

22 REPRESENTATIVE BOHAC: Thank you, Mr.
23 Leavitt. I appreciate it.

24 CHAIRMAN TODD SMITH: We're at 35 minutes
25 now.



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1 Mr. Heflin, do you have a quick one?

2 REPRESENTATIVE HEFLIN: A few quick ones.

3 I think you gave Ms. Trautman seven
4 minutes.

5 CHAIRMAN TODD SMITH: I think you've
6 already used it several times.

7 JUSTIN LEAVITT: Mr. Fund testified ahead
8 of schedule.

9 JUSTIN LEAVITT: I'm also happy,
10 Mr. Chair, if you want to revisit some of the
11 questions that you asked of Ms. Trautman, I'm happy
12 to --

13 CHAIRMAN TODD SMITH: In order to be fair
14 to the way this committee has been laid out, and I'm
15 going much beyond the same amount of time that all the
16 rest of the witnesses are going to have, but I'm going
17 to give you some leeway.

18 Okay.

19 REPRESENTATIVE HEFLIN: Justin, have you
20 read the bill that's before us today?

21 JUSTIN LEAVITT: I have.

22 REPRESENTATIVE HEFLIN: Now, as to the
23 places mail-in ballots -- is there anything in this
24 bill that would correct the possibility or probability
25 of fraudulent or improper mail-in ballots?



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1 JUSTIN LEAVITT: Not that I've seen.

2 REPRESENTATIVE HEFLIN: As far as to this
3 bill -- is there anything that in this bill that will
4 go beyond what we're doing today that would solve or
5 improve the voter impersonation?

6 JUSTIN LEAVITT: No. I mean, I don't
7 believe that voter impersonation could be a problem,
8 no. I don't believe it needs solving.

9 REPRESENTATIVE HEFLIN: So, now, do you
10 believe that if we go to the bill that we're proposing
11 that's before us today, that there will be a
12 substantial cost to produce an identification for
13 every citizen?

14 JUSTIN LEAVITT: I believe there will
15 certainly be a cost to produce the identification. I
16 actually think your most serious cost is most likely
17 to be in the sort of training that you had mentioned
18 in earlier testimony.

19 You have now a system that's relatively
20 straightforward, and under this system you'd be
21 depending on a lot of co poll workers across the
22 state, which is quite expansive to make a lot of
23 choices individually about whether a document was or
24 was not good enough or was or was not on the right
25 list.



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1 I don't know if studies have been done
2 about the increased cost of training or has gone to a
3 more complex system. When I worry about other
4 additional complexities introduced, I worry that the
5 costs are going to go up.

6 REPRESENTATIVE HEFLIN: Do you think that
7 it would be difficult in the State of Texas under our
8 current law for voter impersonation to take place with
9 that one inept poll worker? Or cooperation from the
10 poll worker? Would that be an unfair statement?

11 JUSTIN LEAVITT: No. I think that would
12 be very fair. I think you have insider help, unless
13 you have somebody who's not doing their job, which is
14 in part why it doesn't happen.

15 REPRESENTATIVE HEFLIN: Do you believe
16 that if we had the voter and they didn't have their
17 identification at that time or came back, even came
18 back with their identification that they signed an
19 Affidavit saying they were, in fact, the person that
20 they represented themselves to be would that
21 disenfranchise voters or would that allow us to target
22 potential fraud?

23 JUSTIN LEAVITT: I think it would allow
24 you to actually target potential fraud and here's why:
25 Affidavits, assuming that they're implemented



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1 correctly, which is a big assumption. People have to
2 know that the Affidavit is actually an option and
3 that's been tricky.

4 Other states have used that sort of system
5 and has said, essentially, if it's good enough for
6 court, if it's good enough for you to swear to
7 something before a court of law and we're going to
8 make legal decisions based on that every day, then
9 it's good enough for the vote.

10 And having accepted that Affidavit and
11 having been able to follow up with it, there have been
12 concerned about either identity or eligible because
13 that's an additional paper trail that's available.
14 And it doesn't send anybody home because as
15 Representative Bohac was saying, everybody arrives
16 with the means to sign that Affidavit.

17 REPRESENTATIVE HEFLIN: Let me give you
18 two scenarios and answer which one you think would be
19 the most disenfranchising.

20 If you went to vote and you saw a huge
21 sign that said if you vote and you're not qualified,
22 but to jail or if you were handed a card and says
23 here's what you need to do to vote next time. An
24 education process that would enhance voter
25 participation as opposed to stop voter participation.



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1 Do you believe you could actually
2 disenfranchise through the negative at signages as I
3 described?

4 JUSTIN LEAVITT: I certainly believe that
5 there are ways to implement a program of trying to
6 ward people away from the polls as ineligible, as
7 well. Yes. I certainly believe you will get
8 unnecessarily scared off depending how you do it.

9 There are ways to intimidate. Certainly
10 there are many states that have seen their share of
11 those through signage at the polls, trying to keep
12 people away, even when they were perfectly eligible.

13 REPRESENTATIVE HEFLIN: Thank you for your
14 testimony.

15 JUSTIN LEAVITT: One other note, very
16 quickly on the Affidavit that you mentioned: Texas
17 voters today, as I understand it, already swear that
18 they are who they say they are.

19 And so to some degree, that paper trail is
20 similar to what I'm talking about. The signature on
21 the poll log, that already exists to some degree.

22 CHAIRMAN TODD SMITH: Representative
23 Anchia.

24 REPRESENTATIVE ANCHIA: Sir, if we were to
25 move to a photo ID requirement, you think it would be



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1 important to avoid disenfranchising folks that people
2 could swear that they did not have ID in order to
3 vote, but that they were the person in the poll vote
4 or they were the person on their Voter Registration
5 Certificate in front of witnesses, the same kind of
6 Affidavit that they'd swear in court and then vote a
7 regular ballot?

8 Do you think that would avoid
9 disenfranchising people?

10 JUSTIN LEAVITT: To be very clear: I
11 don't want to recommend that you move to a photo ID
12 requirement. I don't think that it is necessary.

13 If you would choose to do so, I think that
14 would a very substantial safeguard. It's the very
15 system that the state of Michigan has implemented.

16 REPRESENTATIVE ANCHIA: And you'd be able
17 to go back and you'd have a signature on file. You'd
18 have witnesses who saw this person.

19 Heck, you could even take a picture of the
20 person at that point and say, okay, you don't have ID.
21 The state could furnish ID at that point to that
22 universe of people who had to swear the vote saving
23 provision, right?

24 JUSTIN LEAVITT: Yes.

25 CHAIRMAN TODD SMITH: This witness is at



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1 39 minutes, and however long he goes is however long
2 every other witness for the rest of the day is going
3 to have. We're going to be here a long time.

4 REPRESENTATIVE ANCHIA: Can I ask you a
5 couple questions about the bill? You said you read
6 it.

7 JUSTIN LEAVITT: Yes.

8 REPRESENTATIVE ANCHIA: I was concerned
9 about a couple of the facets of the bill and the
10 workability.

11 The only notice provision I saw was in
12 Section 15.005. This is notice to the public.

13 It says that the notice was going to be on
14 the Voter Registration Certificate. And I went and
15 pulled my old Voter Registration Certificate and
16 looked at the back of it and looked at the font size.
17 And I think it's about in six point font right now.
18 Everything is in English and Spanish.

19 If you were to add notice on the back of
20 the certificate, the font size might go down to 3 or 4
21 point font.

22 Do you want to talk about any ADA
23 questions or HAVA questions problems there?

24 JUSTIN LEAVITT: There are certainly
25 administerability questions. This is part of why I



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1 get concerned. The more complex the law is, the more
2 you have to explain to voters, the more you have to
3 pack into very small print. The other extensive
4 mailing.

5 I believe the bill also mentioned that
6 there would be notice of the requirement on websites
7 and I'm not sure how many people proactively checked
8 the county websites.

9 Usually there will be things that we urge
10 anyone passing new legislation to work out and test
11 ahead of time to make sure that it is actually
12 workable before you sign it into law. And that's a
13 practice to we urge across the board.

14 REPRESENTATIVE ANCHIA: I think there are
15 250 counties in the state, and I believe 81 is
16 websites, just out of, you know, I think those are the
17 numbers that we looked at.

18 So, putting something on a website doesn't
19 cover all the counties in Texas, and then there's the
20 question about how many people have Internet access.
21 And yet another problem.

22 CHAIRMAN TODD SMITH: All right. We're
23 done.

24 Representative Anchia, you can stop.
25 41 minutes. We're going back to the original rule of



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1 30 minutes each because one witness on one side was
2 cut off and you give his time to the other side.

3 I don't think anybody would suggest that
4 that's a fair way to handle this hearing. And I've
5 been trying to make sure that it's equally distributed
6 between witnesses on both sides. And to the extent
7 that we --

8 REPRESENTATIVE ANCHIA: I'm happy to be
9 here as long as we need to, so long as we're getting
10 questions answered. And I don't think you would
11 suggest that my questions are not relevant.

12 CHAIRMAN TODD SMITH: No. What I'm trying
13 to do is stick with the agreement that was had in
14 advance of the hearing that we would hear from all
15 these witnesses to an equal extent and be out of here
16 in time for people to get a night's sleep because of
17 the fact that we're going to be up all night tomorrow
18 night.

19 REPRESENTATIVE ANCHIA: I understand that,
20 but I think what we agreed to was with ten minutes for
21 each witness, but I don't think we agreed to any time
22 limit on the questions.

23 CHAIRMAN TODD SMITH: We agreed there
24 would be 30 minutes' of questions. That was the
25 agreement. Per witness. And this gentleman is at 40



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1 now. Because apparently another witness on the other
2 side of the issue wasn't here long enough to answer
3 the full period of questions.

4 And I've allowed it, but I'm not going to
5 allow it. We're not going to just take them one at a
6 time and be here all night.

7 REPRESENTATIVE ANCHIA: I don't think that
8 was universally understood as an agreement.

9 I understood there would be a ten-minute
10 layout of the front and that was the agreement.

11 CHAIRMAN TODD SMITH: So you thought it
12 was ten minutes and people would ask as many questions
13 as they wanted to? You don't know why --

14 REPRESENTATIVE ANCHIA: As many questions
15 as you deemed. That's right.

16 CHAIRMAN TODD SMITH: Well, that's not the
17 agreement. So you misunderstood it.

18 We're going to have 40 minutes of
19 testimony per witness, ten minutes to say whatever
20 they want, and 30 minutes for the members on the
21 panel. And I think I was quite clear in talking about
22 all the members.

23 Because of that constraint, we're going to
24 have to be respectful. You don't remember that
25 discussion?



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1 REPRESENTATIVE ANCHIA: Well --

2 CHAIRMAN TODD SMITH: Respectful of the
3 members on the committee for everybody to ask the
4 questions --

5 REPRESENTATIVE ANCHIA: I don't think my
6 question's have been disrespectful of anybody,
7 Mr. Chairman, including yourself.

8 CHAIRMAN TODD SMITH: No.

9 REPRESENTATIVE ANCHIA: I tried to be very
10 respectful. I just think it enhances the process if
11 we can get our questions answered, and I don't think
12 there's any downside to it.

13 If you're going to cut me off, that's
14 fine. But in the past, in any of our hearings in the
15 past, we've never had this type of time limit of
16 questions being answered.

17 CHAIRMAN TODD SMITH: Because we've never
18 operated under the constraint of trying to get out of
19 here by a certain period of time so that these members
20 can have a full night's sleep before they stay up
21 tomorrow night.

22 I think that was clear at the beginning of
23 the hearing, Mr. Anchia, and it's applied equally to
24 both sides.

25 It has been my intent to get out of here



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1 by a particular time and make sure that the testimony
2 is evenly distributed and the number of questions
3 asked by both sides is evenly distributed.

4 That means --

5 REPRESENTATIVE ANCHIA: Are we behind on
6 your schedule?

7 CHAIRMAN TODD SMITH: Well, what we have
8 done to this point is taken some of one witness' time
9 on one side of the issue and given it to another
10 witness on the other side of the issue.

11 REPRESENTATIVE ANCHIA: But I still think
12 we're on schedule. If the goal is to finish by
13 midnight, I still think we're on schedule to finish by
14 midnight.

15 CHAIRMAN TODD SMITH: Well, do your
16 calculations in terms of the number of witnesses that
17 we have left on the proposal, which I have framed
18 which is 40 minutes per witness, and the count for
19 extra time for people like Ms. McGeehan to answer any
20 questions as a resource witness, and the extent your
21 questions, I'll be glad to evenly distribute the
22 balance of time between all the witnesses that are
23 here to testify today.

24 Thank you.

25 JUSTIN LEAVITT: Thank you.



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1 CHAIRMAN TODD SMITH: I do appreciate your
2 testimony, and I think all of the members of the
3 committee were benefitted by your testimony. Thank
4 you very much.

5 JUSTIN LEAVITT: Thank you very much. I'm
6 also happy to answer additional questions in writing
7 if the committee wishes.

8 CHAIRMAN TODD SMITH: Thank you. Thank
9 you Mr. Leavitt.

10 At this time the chair calls Michael
11 Ertel.

12 MICHAEL ERTEL: Good afternoon,
13 Mr. Chairman. I'm Michael Ertel, supervisor of
14 elections of Seminole County.

15 CHAIRMAN TODD SMITH: And you're here to
16 testify neutral on Senate Bill 362; is that correct?

17 MICHAEL ERTEL: Right. I'm an election
18 official. I, pretty much, try to think neutral.

19 But I do want to start off by saying that
20 I'm here for the Florida Elections Committee. I'm
21 here to try to help.

22 CHAIRMAN TODD SMITH: Sure.

23 MICHAEL ERTEL: And everyone always wants
24 help from Florida.

25 You know, it takes -- and I've been



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1 listening throughout this and I've loved the serve and
2 the volley -- it takes a very long time to build a
3 good reputation, and it takes just one election, one
4 incident, one thing to ruin it.

5 I'm a Florida Elections Official.

6 CHAIRMAN TODD SMITH: How would you know?

7 MICHAEL ERTEL: I was not in 2000. I've
8 been here since 2005.

9 But, you know, I wanted to talk a little
10 bit about the process that you do and you had
11 mentioned it earlier, Chairman, and I think by the
12 way, that you've done a great job in reading the
13 articles preceding this. You've done a great job
14 being very measured about the process that you're
15 doing.

16 Because it's something that no matter what
17 anybody says, someone is going to claim that this leg
18 is trying to do this, and we're really just the guys
19 in this committee. With this hat on. In our role as
20 administrators, we're just the guys with the black and
21 white stripes on. We're not the referees.

22 So I wanted to talk a little bit about the
23 process that we use for provisional ballots. And you
24 mentioned earlier.

25 I brought a copy of one of our provisional



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1 ballot envelopes. If a voter comes tone the voting
2 booth and they forget their ID, and let me actually
3 back up.

4 In Florida on an application, you can
5 state that you do not have a driver's license. You
6 can state that you do not have a Social Security card.
7 And you can still become a registered voter.

8 So you can claim that I have none of those
9 and we can still register you to vote. We get you all
10 signed up. We get your signature on file.

11 So then you go to the polls. And at the
12 polls, let's say you still don't have that driver's
13 license and you still don't have any other form of ID.
14 You can still vote.

15 And through the provisional ballot method,
16 it's our fail safe method. It's a method that insures
17 that everybody has an opportunity to vote. It keeps
18 our poll workers who work, one day a year, maybe two
19 days a year.

20 It keeps our poll workers from having to
21 make a snap decision from somebody that's standing in
22 front of them that does not have an ID. And perhaps
23 they're embarrassed that they don't have an ID because
24 they forgot it at home.

25 Perhaps they've been told by somebody that



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1 they can't vote because they don't have an idea and
2 they're just going to the polls.

3 They waited in line for 30 minutes and
4 they get up there and then they're told they don't
5 have an ID. So we let them vote. We always, always,
6 let them vote. But we gotta verify they have the
7 ability and the eligibility to vote. And the way we
8 do that is with our provisional ballot process, which
9 is a great process.

10 And as you'd mentioned before, it's one
11 that the voter themselves does not then have to come
12 back to our office and say, see, look, this is me,
13 this is me. They can simply go there, they fill out
14 their ballot, we've got a copy of one of our ballots,
15 not an official, a turn-in ballot.

16 They fill out the ballot. They put it in
17 this envelope. In the secrecy sleeve. They put it in
18 here. They seal it up in front of our poll workers,
19 and they fill out some information on the outside.

20 Our canvassing board, which each of our
21 election supervisors are a member of, unless we're on
22 the ballot ourselves. Our canvassing board, which
23 consists of a judge, a County Commissioner and the
24 Supervisor of Elections.

25 If any of the county commissioners,



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